805.

SUPREME COURT OF THE UNITED STATES.

No. 184.

THOMAS RICHARDSON, PLAINTIFF IN ERROR,

vs.

THE CITY OF BOSTON.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF RHODE ISLAND.

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At a Circuit Court of the United States for the first circuit, holden at Newport, within and for the Rhode Island district, on the fifteenth day of June, A. D. 1858.

Present, Hon. Nathan Clifford, associate justice Supreme Court U. S., Hon. John Pitman, U. S. dist. judge for R. I. dist., George H. Browne, esq., U. S. dist. attorney for R. I. district, Francis C. Gardiner, U. S. marshal, Henry Pitman, clerk of circuit court.

In the record of the proceedings of said court among others are the following, to wit:

UNITED STATES OF AMERICA,
Massachusetts District, ss.

October Term, 1852.

At a circuit court of the United States, for the first circuit and district of Massachusetts, begun and holden at Boston, on Friday, the fifteenth day of October, in the year of our Lord one thousand eight hundred and fifty-two, before the Hon. Benjamin R. Curtis, associate justice, Hon. Peleg Sprague, district judge.

THOMAS RICHARDSON, of Providence, in the State of Rhode Island, a citizen of said State of Rhode Island, Plaintiff,

vs.

THE CITY OF BOSTON, a Corporation established by law in the State of Massachusetts, all the members of which are citizens of said State, in our district of Massachusetts, Defendants.

In a plea of trespass on the case, for that whereas the said pl'ff, before and at the time of the committing of the grievance by the said city of Boston, as hereinafter next mentioned, was, and from thence hitherto hath been, and still is, lawfully seized and possessed of a certain wharf, with the appurtenances thereto belonging, situated in Sea street, in said Boston, known as Prices' wharf, and bounded as follows, to wit: northerly on the south side of Summer street and the dock at the end thereof, extending from the corner of Summer street and Sea street, formed by the east side of Sea street and by the south side of Summer street, to the channel; then bounded on the north by Sea street, from the aforesaid corner to the land of David W. Bradlee and Ann, his wife; then bounded southerly by said land of said Bradlee and Ann, his wife, in her right, and extending from Sea street, out to the channel; and then bounded easterly by the channel; and by reason thereof, he, the said pl'ff, during all the time aforesaid, ought to

have and had, and still of right ought to have, a certain way from said wharf over said dock unto the channel or low-water mark, for himself and servants and his vessels to go and return, pass and repass every year, and at all times of the year, at his free will and pleasure, as to the said wharf of the pl'ff belonging and appertaining.

Yet the said city of Boston, well knowing the premises, but wrongfully and unjustly contriving and intending to injure the said pl'ff in that behalf, and to deprive him of the use and benefit of said way and dock, whilst he, the said pl'ff, was so possessed of his said wharf, with the appurtenances aforesaid, to wit, on the 13th day of September, A. D. 1850, wrongfully and injuriously kept and continued, and caused to be kept and continued, divers large quantities of wood and timber, in and across the said way or dock, before then wrongfully placed and erected, and caused to be placed and erected, by said city of Boston, in and across said way or dock for a long space of time, to wit, hitherto, and thereby during all the time aforesaid the said way and dock were and still are greatly obstructed and stopped up, and the said pl'ff, by means thereof, could not, during all the times aforesaid, or any part thereof, nor can he now, have or enjoy his said way or dock as he of right ought to have done, and otherwise might and would have done, and has been, and is by means of the premises, deprived of the use, benefit, and advantage thereof and by means thereof the access of boats and vessels to said wharf, and the egress therefrom to the sea, has been interrupted and destroyed, and great quantities of earth, mud, and other materials had been floated to and deposited upon and near the said wharf, and thereby the use and enjoyment thereof and the value of the pl'ff's estate therein have been greatly injured.

Also for that the pl'ff, before and at the time of the committing of the grievances by the said city of Boston, as hereinafter next mentioned, was, and from thence hitherto hath been, and still is, lawfully seized and possessed of a certain other wharf, with the appurtenances thereto belonging, situated in Sea street, in said Boston, known as Prices' wharf, and bounded as follows, to wit: northerly on the south side of Summer street and the town dock at the end thereof, extending from the corner of Summer and Sea streets, formed by the east side of Sea street and by the south side of Summer street, to the channel; then bounded on the north by Sea street from the aforesaid corner to land of David W. Bradlee and Ann, his wife, in her right, and extending from Sea street out to the channel, and then bounded easterly by the channel. And the pl'ff avers that said dock, forming the northerly boundary of the estate so by him possessed as aforesaid, was, at the time of the committing of the grievances hereinafter alleged, and for a long time prior thereto had been, a public dock, slip or way, and by rea-

son thereof the said pl'ff, during all the time aforesaid, had, ought to have, and still ought to have, free egress with boats and vessels of every description upon, over, and through said dock, from the wharf so by him possessed as aforesaid, to the channel of the sea, and from said channel of the sea to his said wharf.

Yet the said city of Boston, well knowing the premises, but wrongfully and unjustly contriving and intending to injure the said pl'ff in that behalf, and to deprive him of the use and benefit of said way and dock, whilst he, the said pl'ff, was so possessed of his said wharf, with the appurtenances as aforesaid, to wit, on the 13th day of September, A. D. 1850, wrongfully and injuriously kept and continued, and caused to be kept and continued, divers large quantities of wood and timber in and across the said way or dock, before then wrongfully placed and erected, and caused to be placed and erected by said city of Boston, in and across said way or dock for a long space of time, to wit, hitherto, and thereby during all the time aforesaid, the said way and dock were and still are greatly obstructed and stopped up, and the said pl'ff, by means thereof, could not, during all the time aforesaid, or any part thereof, nor can he now, have or enjoy the said way or dock, as he of right ought to have done, and otherwise might and would have done, and has been, and is, by means of the premises, deprived of the use, benefit, and advantage thereof, and by means thereof, the access of boats and vessels to said wharf, and the egress therefrom to the sea has been interrupted and destroyed, and great quantities of earth, mud, and other materials have been floated to and deposited upon and near the said wharf, and thereby the use and enjoyment thereof and the value of the pl'ff's estate therein has been greatly injured.

Also, for that, whereas the said pl'ff, before and at the time of the committing of the grievance by the said city of Boston, as hereinafter next mentioned, was, and from thence hitherto hath been, and still is, lawfully seized and possessed of a certain wharf, with the appurtenances thereto belonging, situated in Broad street, so called, in said Boston, known as the Bull wharf, and bounded thus: westerly or northwesterly on Broad street, there measuring sixty-two feet and three inches, or thereabouts; northerly or northeasterly on land formerly belonging to Peleg Solman, there measuring six hundred and fifty-three feet, more or less; easterly or southeasterly on low-water mark, there measuring fifty-two feet or thereabouts; southerly or southeasterly on a way or dock, there measuring six hundred and sixty feet, more or less; and by reason thereof, he, the said pl'ff, during all the time aforesaid, ought to have had, and still of right ought to have, a certain way from his said wharf unto the channel or low-water mark, for himself and servants, and his vessels, to go, return, pass and repass every year, and at all times of the year, at their free will and pleasure,

as to the said wharf of the said pl'ff belonging and appertaining. Yet the said city of Boston, well knowing the premises, but wrongfully and unjustly contriving and intending to injure the said pl'ff in that behalf, and to deprive him of the use and benefit of said way and dock, whilst he, the said pl'ff, was so possessed of his said wharf, with the appurtenances so as aforesaid, to wit, on the 13th day of September, A. D. 1850, wrongfully and injuriously kept and continued, and caused to be kept and continued, divers large quantities of wood and timber in and across the said way or dock, before then wrongfully placed and erected, and caused to be placed and erected, by said city of Boston, in and across the said way or dock, for a long space of time, to wit, hitherto, and thereby, during all the time aforesaid, the said way or dock were and still are greatly obstructed and stopped up, and the said pl'ff, by means thereof, could not during the time aforesaid, or any part thereof, nor can he now, have or enjoy his said way or dock as he of right ought to have done, and otherwise might and would have done, and has been, and is, by means of the premises, deprived of the use and benefit and advantage thereof, and by means thereof the access of boats and vessels to said wharf, and the egress therefrom to the sea, has been interrupted and destroyed, and great quantities of earth, mud, and other materials has been floated to and deposited upon and near the said wharf, and thereby the use and enjoyment thereof and the value of the plaintiff's estate therein has been greatly injured.

And also, for that the pl'ff, before and at the time of the committing of the grievance by the said city of Boston as hereinafter next mentioned, was, and from thence hitherto hath been and still is, lawfully seized and possessed of a certain other wharf, with the appurtenances thereto belonging, situated in Broad street, so called, in said Boston, known as the Bull wharf, and bounded thus: westerly or northwesterly on Broad street, there measuring sixty-two feet and three inches, or thereabouts; northerly or northeasterly on land formerly belonging to Peleg Solman, there measuring six hundred and fifty-three feet, more or less; easterly or southeasterly on low-water mark, there measuring fifty-two feet, or thereabouts; southerly or southwesterly on the town way or dock, there measuring six hundred and sixty feet, more or less. And the pl'ff avers that said dock, forming the southerly boundary of the estate so by him possessed as aforesaid, was at the time of the grievance hereinafter alleged, and for a long time prior thereto had been, a public dock, slip, or way, and by reason thereof, he, the said pl'ff, during all the time aforesaid, had, ought to have, and still ought to have, free egress with boats and vessels of every description upon, over, and through said dock, from the wharf so by him possessed as aforesaid to the channel of the sea, and from said channel of the sea to his said wharf. Yet the said city of Boston, well

knowing the premises, but wrongfully and unjustly contriving and intending to injure the said pl'ff in that behalf, and to deprive him of the use and benefit of his said way and dock, whilst he, the said pl'ff, was so possessed of his said wharf, with the appurtenances as aforesaid, to wit, on the 13th day of September, in the year of our Lord eighteen hundred and fifty, wrongfully and injuriously kept and continued, and caused to be kept and continued, divers large quantities of wood and timber in and across the said way or dock, before then wrongfully placed and erected, and caused to be placed and erected by the said city of Boston, in and across the said way or dock, for a long space of time, to wit, hitherto, and thereby, during all the time aforesaid, the said way or dock were and still are greatly obstructed and stopped up, and the said pl'ff, by means thereof, could not, during the time aforesaid, or any part thereof, nor can he now, have or enjoy his said way or dock, as he of right ought to have done, and otherwise might and would have done, and has been, and is by means of the premises, deprived of the use, benefit, and advantage thereof, and by means thereof the access of boats and vessels to said wharf, and the egress therefrom to the sea, has been interrupted and destroyed, and great quantities of earth, mud, and other materials have been floated to and deposited upon and near the said wharf, and thereby the use and enjoyment thereof and the value of the pl'ff's estate therein have been greatly injured.

Also for that, before and at the time of the committing of the grievance by the said city of Boston, as herein next mentioned, a certain wharf, with the appurtenances thereto belonging, situated in Sea street, in said Boston, known as Prices' wharf, and bounded northerly on the south side of Summer street and the dock at the end thereof, extending from the corner of Sumner and Sea streets, formed by the east side of Sea street and the south side of Sumner street, to the channel, was in the possession and occupation of one Calvin Bullard, as tenant thereof to the pl'ff, the reversion thereof then and still belonging to the pl'ff. And then and there a certain other wharf situated in Broad street, so called, in Boston, known as the Bull wharf, and bounded southerly on the dock aforesaid, to low-water mark, was then and there in the possession and occupation of Lecraw & Perkins, as tenants thereof to the pl'ff, the reversion thereof then and still belonging to the said pl'ff, and by reason thereof the pl'ff ought at all times forever, after the determination of said tenancies, and the said tenants during their said tenancy, to have a certain way from each of said wharves unto the channel or low-water mark, for himself, his servants and vessels, to go, return, pass and repass every year, and at all times of the year, of their free will and pleasure, as to said wharf belonging and appertaining. Yet the said city of Boston, well knowing the premises, but contriving and intend-

ing, wrongfully and unjustly, to injure the pl'ff in his reversionary estate and interest of and in said respective wharves, with the appurtenances, while said wharves were so in the possession and occupation of said tenants, and while the pl'ff was so interested therein as aforesaid, to wit, on the 13th day of September, A. D. 1850, wrongfully and injuriously kept and continued, and caused to be kept and continued, divers large quantities of wood and timber, stone and earth, in and across the said way or dock, before then wrongfully placed and erected, and caused to be placed and erected by said city of Boston, in and across the said way or dock, for a long space of time, to wit, hitherto, by means of which said several premises the pl'ff hath been and is greatly injured and prejudiced in his said reversionary estate, and interested of and in the said wharves respectively, with their appurtenances, so in possession of the said Lecraw & Perkins and Bullard, respectively, as tenants thereof to the pl'ff, and by means thereof the access of boats and vessels to said wharves, and the egress therefrom to the sea, has been interrupted and destroyed, and great quantities of earth, mud, and other materials have been floated to and deposited upon and near the said wharves, and thereby the use and enjoyment thereof and the value of the pl'ff's reversionary estate therein have been greatly injured.

Also for that, before and at the time of the committing of the grievances by the said city of Boston, as hereinafter mentioned, a certain wharf with the appurtenances thereto belonging, situated in Sea street, in said Boston, known as Prices' wharf, and bounded northerly on the south side of Sumner street and the public or town dock, at the end thereof, extending from the corner of Summer street and Sea street, formed by the east side of Sea street and the south side of Summer street, to the channel, was in the possession and occupation of one Calvin Bullard, as tenant thereof to the pl'ff, the reversion thereof then and still belonging to the pl'ff. And then and there a certain other wharf, situated in Broad street so called, in said Boston, known as the Bull wharf, and bounded southerly on the public or town dock, as aforesaid, to low water-mark, was then and there in the occupation and possession of Lecraw & Perkins, as tenants thereof to the pl'ff, the reversion thereof then and still belonging to the pl'ff, and the pl'ff avers that the dock aforesaid upon which said respective wharves bound as aforesaid was, at the time of the committing of the grievances hereinafter alleged, and for a long time prior thereto had been, a public way, slip or dock, and by reason thereof the pl'ff ought at all times forever, after the termination of the tenancies aforesaid, to have free egress and passage with boats and vessels of every description upon, over, and through said dock or way, from the said respective wharves aforesaid to the channel of the sea, and from the channel of the sea to said wharves. Yet the said city of Boston, well knowing the premises, but contriving and intending to injure the pl'ff in his said

reversionary interest and estate of and in said respective wharves and their appurtenances, while said wharves were so in the possession and occupation of said tenants, and while the pl'ff was so interested therein as aforesaid, to wit, on the 13th day of September, A. D. 1850, wrongfully and injuriously kept and continued, and caused to be kept and continued, divers large quantities of wood and timber, stone and dirt, in and across the said way or dock, before then wrongfully placed and erected, and caused to be placed and erected by the said city of Boston, in and across the said way or dock, for a long space of time, to wit, hitherto, by means of which said several premises, the pl'ff hath been and is greatly injured and prejudiced in his reversionary interest and estate of and in said wharves respectively, with their appurtenances, so in the possession of said Lecraw & Perkins and Bullard, respectively, as tenants thereof of the pl'ff, and by means thereof the access of boats and vessels to said wharves, and the egress therefrom to the sea, has been interrupted and destroyed, and great quantities of earth, mud, and other materials have been floated to and deposited upon and near the said wharves, and thereby the use and enjoyment thereof and the value of the plaintiff's reversionary estate therein have been greatly injured, to the damage of the said Richardson, as he says, the sum of nineteen hundred and ninety-nine dollars. Whereupon, the marshal made his return; which is in the words following, viz:

UNITED STATES OF AMERICA,
Mass. Dist., ss.

BOSTON, *April* 15, 1852.

Pursuant hereunto I have summoned the City of Boston, the defendant within named, by leaving at the last and usual place of abode of Benjamin Seaver, the mayor of said city, and also by leaving at the last and usual place of abode of Samuel F. McCleary, sr., the clerk of said city, respectively, a true and attested copy of the within writ, for the appearance of said city in court in this action.

CHAS. DEVENS, SR.,
U. S. Marshal, Mass. District.

2 services and travel.....	$4 05
2 copies.....	6 00
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This action was entered at the May term of this court, A. D. 1852, when and where the parties appeared by their respective attorneys; and afterwards, at that term, the pl'ff had leave to amend his declaration, as follows:

THOMAS RICHARDSON
vs.
CITY OF BOSTON.

And now, by leave of the court here, the pl'ff amends his declaration by adding at the end of each count thereof the words, "and the pl'ff has been obliged to reduce and has reduced, and been unable to get and obtain, the rents which he has formerly been accustomed to obtain, or those he was entitled to receive from said wharves.

By S. BARTLETT,
His Attorney.

And thence this action was continued unto this present term; and now the pl'ff, by his attorney, files the following motion, to wit:

CIRCUIT COURT UNITED STATES,
Massachusetts District.

THOMAS RICHARDSON
vs.
CITY OF BOSTON.
No. 92. October Term, 1852.

And now the pl'ff shows the court here that the honorable the judge of the supreme court, to whom this circuit has been assigned, is incompetent to try the same, by reason of his having been of counsel for one of the parties. That the honorable the district judge is legally incompetent, by reason of his being concerned in interest in said cause to try the same. Wherefore he moves the court here that the foregoing facts be entered of record; and the pl'ff moves the court here that an order be passed that an authenticated copy of said entry, with all the proceedings in said suit or action, be forthwith certified to the most convenient circuit court in the next adjacent State.

By S. BARTLETT,
His Attorney.

Whereupon it is ordered by the court, that the clerk do enter on the record of this case the fact, that the Hon. Benj. R. Curtis, one of the associate justices of the Supreme Court of the United States, who is assigned to this circuit, has been of counsel with the said pl'ff while practicing at the bar, and therefore declines to set in this case. And also the further fact, that the Hon. Peleg Sprague, district judge of the United States for this district, is an inhabitant of the city of Boston, and so interested in the result of this suit, and therefore declines to set in this case. And afterwards, to wit, on the 15th day of October, A. D. 1852, it is further ordered, that an authenticated copy of the record and all the proceedings in this suit be forthwith certified to the circuit court next to be holden at Providence, within and for the district of Rhode Island, on the fifteenth

day of November next, the same being the most convenient circuit court in the next adjacent State.

UNITED STATES OF AMERICA,
Massachusetts District, ss.

I, Isaac O. Barnes, clerk of the circuit court of the United States for the first circuit, Massachusetts district, do hereby certify that the foregoing is a true copy of the record of the case, Thomas Richardson vs. The City of Boston.

In testimony whereof I have hereunto subscribed my name and affixed the seal of the said court, at Boston, this fifteenth [SEAL.] day of November, A. D. 1852, and in the seventy-seventh year of the independence of the United States of America.

ISAAC O. BARNES, *Clerk.*

And the case being continued to the June term following, is committed to the following jury: William Pinnegar, foreman, Seth C. Bradford, John S. Tilley, John Hambly, James O. Sweit, George O. Browning, Stillman Welch, James Burlingame, Jeremiah Hazzard, James Lewis, Jesse B. Crandall, George W. Barney, who come into court and render a verdict; which is duly affirmed in the words following, to wit: The jury find the defendants guilty in manner and form as in the sixth count of the pl'ff's declaration alleged, and assess the pl'ff's damages at the sum of one thousand nine hundred and ninety-nine dollars.

(Signed) WILLIAM PINNEGAR,
Foreman.

After which the defendants file a motion for new trial. And the case being further continued to the June term, A. D. 1855, by agreement of parties, a new trial is granted, and by leave of court the plaintiff amends his writ and declaration, as follows:

Amendment.

CIRCUIT COURT OF THE UNITED STATES,
District of Rhode Island.

THOMAS RICHARDSON
vs.
THE CITY OF BOSTON.

And now the pl'ff, by leave of the court here, amends his writ and declaration, as follows:

First. By striking out the sum constituting the ad damnum in said writ, and inserting in lieu thereof the sum of thirty-five hundred dollars.

Second. By adding the following count:

Also for that the pl'ff, before and at the time of the committing of the grievances by the said city of Boston, as hereinafter mentioned, was and from thence hitherto hath been and still is lawfully seized

and possessed of a certain other wharf, with the appurtenances thereto belonging, situated in Sea street, in said city of Boston, known as Prices' wharf, and bounded as follows, to wit: northerly on the south side of Summer street, and a highway or town way or public way to the sea, sometimes known as the town dock, extending from the corner of Summer street and Sea street to the channel; then bounded north by Sea street to the land formerly belonging to David W. Bradlee and Ann, his wife; and from Sea street running easterly, bounded by the land of said Bradlee and wife, to the channel or low-water mark, and bounded easterly by the channel or low-water mark. And also before and at the time aforesaid, and from thence hitherto, the pl'ff hath been and still is seized of a certain other wharf, with the appurtenances thereto belonging, situated on Broad street, in said Boston, known as the Bull wharf, and bounded thus westerly or northwesterly on Broad street, there measuring sixty-two feet and three inches, or thereabouts; northerly on land formerly belonging to Peleg Solman, to low-water mark, measuring about six hundred and fifty-three feet, more or less; easterly in low-water mark, there measuring fifty-two feet, or thereabouts; southerly on the highway or town way or public way aforesaid, sometimes called the town dock, to low-water mark, measuring about six hundred and sixty feet, more or less.

And the pl'ff avers that the way aforesaid, upon which said respective wharves bound as aforesaid, was, at the time of the committing of the grievances hereinafter alleged, and for a long time prior thereto had been, a public highway, or town way, or public way to the sea or low water, duly laid out and established pursuant to law; and by reason thereof the said pl'ff, during all the time aforesaid, had, ought to have, and still ought to have, free egress and ingress, with boats and vessels of every description, upon, over, and through said way, to and from the wharves so by him possessed as aforesaid, from and to the channel of the sea. Yet the said city of Boston, well knowing the premises, but wrongfully and unjustly contriving and intending to injure the said pl'ff in that behalf, and to deprive him of the use and benefit of said way, whilst he, the said pl'ff, was so possessed of his said wharves, with the appurtenances as aforesaid, to wit, on the 13th day of September, A. D. 1850, wrongfully and injuriously kept and continued, and caused to be kept and continued, divers large quantities of wood and timber in and across the said way, before then wrongfully placed and erected, and caused to be placed and erected, by the said city of Boston, in and across the said way, for a long space of time, to wit, hitherto, and thereby during all the time aforesaid the said way was and still is greatly obstructed and stopped up, and the said pl'ff by means thereof could not during all the time aforesaid, or any part thereof, nor can he now, have or enjoy the said way, as he of right ought to have done, and other-

wise might and would have done, and has been and is by means of the premises deprived of the use, benefit, and advantage thereof, and by means thereof the access of boats and vessels to said wharves, and the egress therefrom to the sea, has been obstructed and destroyed, and great quantities of mud, earth, and other materials have been thrown and deposited upon and near the said wharves, and thereby the use and enjoyment thereof and the value of the pl'ff's estate therein has been greatly injured, and the pl'ff has been, by reason of the premises, obliged to reduce and has reduced, and been unable to obtain and get, the rents which he has formerly been accustomed to obtain, or those which he was entitled to receive from the said wharves or the use thereof.

And the case being called for trial, is submitted to the following jury:

George Robinson, foreman, Christ'r S. Crandall, Hicks Cornell, Chas. W. Woodruff, Thomas Pearce, Thomas B. Tibbetts, James M. Davis, William James, Dana Clarke, Benj. Watson, Noah Wight, Wilbur Hazard—who render the following verdict:

The jury find that the defendants are not guilty in manner and form as the plaintiff in his declaration has alleged.

(Signed) GEORGE ROBINSON,
Foreman.

Judgment.

Whereupon it is considered by the court here that the defendant have and recover of the plaintiff his costs of suit, taxed at five hundred and seventy-three dollars and forty-three cents.

After the rendition of the above judgment, the pl'ff files a petition for a writ of error to the Supreme Court of the United States; which petition was allowed, and the case is duly certified to the Supreme Court accordingly, at their December term, A. D. 1855.

And at the November term, A. D. 1857, of the circuit court, the cause was again entered on the docket, in accordance with the following mandate from the Supreme Court of the United States:

Mandate.

UNITED STATES OF AMERICA, *ss.*

The President of the United States of America to the honorable the Judges of the Circuit Court of the United States for the district of Rhode Island, greeting: [L. S.]

Whereas lately, in the circuit court of the United States for the district of Rhode Island, before you, or some of you, in a cause between Thomas Richardson, plaintiff, and the city of Boston, defendant, the judgment of the said circuit court was in the words following, viz:

"Whereupon it is considered by the court here that the defendant have and recover of the plaintiff his costs of suit, taxed at five

hundred seventy-three dollars and forty-three cents, as by the inspection of the transcript of the record of the said circuit court, which was brought into the Supreme Court of the United by virtue of a writ of error, agreeably to the act of Congress in such case made and provided, fully and at large appears.

And whereas, at the present term of December, A. D. 1856, the said cause came on to be heard before the said Supreme Court on the said transcript of the record, and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this court, that the judgment of the said circuit court in this cause be, and the same is hereby, reversed, with costs; and that the said plaintiff, Thomas Richardson, recover against the said defendant, the city of Boston, one hundred and fifty-five dollars and thirty-one cents, for his costs herein expended, and have execution therefor.

And it is further ordered that this cause be and the same is hereby remanded to the said court, with directions to amend a vinere facias de novo. Feb'y 18.

You, therefore, are hereby commanded that such execution and further proceedings be had in said cause, in conformity to the opinion and judgment of this court, as according to right and justice and the laws of the United States ought to be had, the said writ of error notwithstanding.

Witness the Honorable Roger B. Taney, Chief Justice of said Supreme Court, the first Monday of December, in the year of our Lord one thousand eight hundred and fifty-six.

Costs of plaintiff:

Clerks.....	135 31
Attorney.....	20 00
	155 31

Served by—

WM. THOS. CARROLL,
Clerk of the Supreme Court U. S.

And a new trial was thereupon ordered.

And the cause being continued from term to term to the present June term, A. D. 1858, by leave of court the plaintiff amends his writ and declaration, as follows:

Amendments.

Circuit Court of the United States, district of Rhode Island.

THOMAS RICHARDSON
vs.
THE CITY OF BOSTON.

And now the plaintiff, by leave of the court here, amends his writ and declaration as follows, to wit: By striking out the words

constituting the ad damnum in said writ, as the same now stands, and inserting in lieu thereof the words following, viz: "ten thousand dollars."

By S. BARTLETT, *his Attorney.*

And now, by agreement of parties, and with the leave of the court here, pl'ff amends the several counts of his declaration by striking therefrom such parts thereof as claim damages for the injury to the ends of his wharves by material deposition near the same, by means of the structure complained of.

By S. BARTLETT, *his Attorney.*

And the case being called for trial, is committed to the following jury:

James Hoar, foreman, Isaac Hall, Silas James, Wm. Messir, Horace M. Barnes, Wm. Marchant, William Robinson, Wm. D. Southwick, George Sawyer, Abraham H. Silley, Benj. F. Taggart, Bennett Wilbur.

And they, under instructions from the court, render a verdict; which is duly affirmed in the words following, to wit:

The jury find that the defendant is not guilty in manner and form as the plaintiff hath in his declaration alleged.

(Signed) JAMES HOAR, *Foreman.*

Judgment.

Whereupon it is considered by the court here that the defendant have and recover of the plaintiff his costs of suit, taxed at five hundred and fifty-four dollars and eighty-six cents.

And after the rendition of the above judgment the plaintiff enters the following:

Petition for Writ of Error.

RHODE ISLAND DISTRICT, *ss.*

Circuit Court of the United States. In the case—

THOMAS RICHARDSON
vs.
CITY OF BOSTON.

To the Honorable John Pitman, Judge of the United States for said Rhode Island district.

The said Thomas Richardson respectfully represents, that at the present June term, 1858, of said court, judgment was rendered against him in favor of the defendant in said cause upon the verdict of the jury therein. That the said plaintiff excepted to the charge of the court to the jury and *and* their ruling of the law in said case, as fully appears in the bill of exceptions filed in said case. Whereupon said plaintiff prays that a writ of error may be

allowed in said cause, returnable to the next December term of the Supreme Court of the United States, to be holden at Washington.

September 21st, 1858.

THOMAS RICHARDSON.

SEPTEMBER 22*d*, 1858.

Let a writ of error issue; bond having been filed and approved.

JOHN PITMAN,
District Judge U. S., R. I. District.

Bond.

THOMAS RICHARDSON
vs.
CITY OF BOSTON. } In Error.

Know all men by these presents that I, Thomas Richardson, of Providence, in the State of Rhode Island, as principal, and I, Thomas F. Richardson, of Boston, in the county of Suffolk, and Commonwealth of Massachusetts, as surety, our heirs, executors and administrators, are held and firmly bound unto the above named city of Boston in the sum of two thousand dollars, to be paid to the said city of Boston and its successors: to which payment, well and truly to be made, the said Thomas Richardson, as principal, and the said Thomas F. Richardson, as surety, bind themselves, jointly and severally, and their and each of their heirs, executors and administrators.

In witness whereof the said Thomas Richardson and the said Thomas F. Richardson have hereunto affixed our hands and seals, this twenty-first day of September, A. D. eighteen hundred and fifty-eight.

Whereas the above named Thomas Richardson has prosecuted a writ of error to the Supreme Court of the United States, to reverse the judgment rendered in the above entitled suit by the circuit court, for the first circuit, in and for the district of Rhode Island:

Now, therefore, the condition of this obligation is such, that if the above named Thomas Richardson shall prosecute his said writ of error to effect, and answer all demands and costs if he shall fail to make good his plea, then this obligation shall be null and void; otherwise, the same shall be and remain in full force and effect.

THOMAS RICHARDSON, [SEAL.]
T. F. RICHARDSON. [SEAL.]

In presence of—
DAVID THAXTER,
WM. O. CHURCHILL.

September 22d, 1858.

Approved.

JOHN PITMAN,
Dist. Judge U. S. for Rhode Island Dist.

Bill of Exceptions.

THOMAS RICHARDSON
vs.
CITY OF BOSTON.

Circuit Court of the United States.—June Term, 1858.

RHODE ISLAND DISTRICT, *ss.*

At the trial of the above entitled cause, before a jury empannelled for that purpose, the plaintiff, to maintain the issue on his part, offered evidence tending to show that he was the owner in fee of two wharves, shown in a plan marked A, which may be referred to as a part of this bill of exceptions; and that a structure, composed of timber, and also shown on said plan, and situated as there indicated, existed during the time covered by his declaration; and it was admitted by the defendants that the effect of the said structure was to prevent vessels for the most part from entering the space between the said wharves of the plaintiff, and from having access to the sides thereof, and it was on this ground only, and not for any obstruction to a way for travel on land, that the plaintiff claimed damages, by reason of the structure.

The plaintiff offered further evidence, tending to show that the said structure was erected in September, 1849, under the supervision of the superintendent of drains of the city of Boston, and that the bills for the expense thereof were approved by a committee of the board of aldermen of the city of Boston, passed and ordered to be paid by the auditor of accounts of the said city, his action approved by the joint committee on accounts on the city council, and that they were paid out of the treasury of the said city.

It was admitted and agreed by the parties, that prior to and at the time in question, there was a discharge from one of the common sewers of the city into the space between the two said wharves, which was prejudicial to the health of the neighborhood; but it was insisted by the plaintiff that the particular structure in question was not a reasonably suitable and proper means of conducting the foul matter from the then termination of the sewer to the sea. The plaintiff proposed to introduce evidence to show, that before the structure called a drain was began to be built by the city, and after the order to build the same through or upon the land asserted by the plaintiff to be a way, on which his wharves bound, was passed by the mayor and aldermen, he offered to the proper city authorities to permit the drain to be built under his wharf without charge, so that the same would not affect or injure his right to use said alleged way, and that such structure would have been as effectual

to remove any nuisance, and as inexpensive to the city, as the structure actually built; but the court ruled that such evidence was by law inadmissible.

The plaintiff proposed to offer evidence, tending to show that said drain might have been built at the side of either of his wharves, and on said alleged way, in a manner which would not have obstructed said way, and as effectually for removing any nuisance as the structure actually built, and without any increase of expense to the city; but the court ruled that said evidence was inadmissible. To these rulings the plaintiff excepted.

And further to maintain the issue on his part, the plaintiff put in evidence a duly authenticated copy of the record of a judgment; which was as follows:

UNITED STATES OF AMERICA,
Rhode Island District, sc.

At a circuit court of the United States for the first circuit within and for the Rhode Island district, begun and holden at Newport, on the fifteenth day of June, A. D. 1853.

Present, Hon. Benj'n R. Curtis, asso. justice Supreme Court United States, Hon. John Pitman, U. S. district judge, R. I. dist., Geo. H. Brown, esq., U. S. dis't attorney, Francis C. Gardiner, U. S. marshal, John T. Pitman, clerk.

Be it remembered, that at the November term of said court, A. D. 1852, the following transcript from the record of the circuit court of the United States, within and for the Massachusetts district, was certified to this court.

October Term, 1852.

UNITED STATES OF AMERICA,
Massachusetts District.

At a circuit court of the United States for the first circuit and district of Massachusetts, begun and holden at Boston, on Friday, the fifteenth day of October, in the year of our Lord one thousand eight hundred and fifty-two, before the Honorable Benj. R. Curtis, associate justice, Hon. Peleg Sprague, district judge.

THOMAS RICHARDSON, of Providence, in the State of Rhode Island, merchant, a citizen of said State of Rhode Island, Plaintiff,

vs.

THE CITY OF BOSTON, a Corporation established by law in the State of Massachusetts, all the members of which are citizens of said State, in our district of Massachusetts, Defendants.

1st. In a plea of trespass on the case, for that whereas the said plaintiff, before and at the time of the committing of the grievance by the said city of Boston, as hereinafter next mentioned, was, and

from thence hitherto hath been and still is lawfully seized and possessed of a certain wharf, with the appurtenances thereto belonging, situated in Sea street, in said Boston, known as Prices' wharf, and bounded as follows, to wit: northerly on the south side of Summer street and the dock at the end thereof, extending from the corner of Summer and Sea streets, formed by the east side of Sea street and by the south side of Summer street, to the channel; then bounded on the north by Sea street from the aforesaid corner to the land of David W. Bradlee and Ann, his wife; then bounded southerly by said land of said Bradlee and Ann, his wife, in her right, and extending from Sea street out to the channel; and then bounded easterly by the channel; and by reason thereof he the said plaintiff during all the time aforesaid ought to have had, and still of right ought to have, a certain way from said wharf unto the channel or low-water mark, for himself and servants and his vessels to go, return, pass and repass every year, and at all times of the year, at his free will and pleasure, as to the said wharf of plaintiff belonging and appertaining. Yet the said city of Boston, well knowing the premises, but wrongfully and unjustly contriving and intending to injure the said plaintiff in that behalf, and to deprive him of the use and benefit of said way and dock, whilst he the said plaintiff was so possessed of his said wharf, with the appurtenances as aforesaid, to wit, on the twenty-fourth day of August, in the year of our Lord one thousand eight hundred and forty-nine, and on divers other days and times between that day and the purchase of this writ, wrongfully and injuriously placed and erected, and caused to be placed and erected, divers large quantities of wood and timber in and across the said way or dock, and kept and continued the said wood and timber, so placed and erected in and across the said way or dock as aforesaid, for a long space of time, to wit, hitherto, and thereby, during all the time aforesaid, the said way and dock were and still are greatly obstructed and stopped up, and the said plaintiff by means thereof could not during all the time aforesaid, or any part thereof, nor can they now, have or enjoy their said way or dock as they of right ought to have done, and otherwise might and would have done, and have been and are by means of the premises deprived of the use, benefit, and advantage thereof.

2d. Also, for that the plaintiff, before and at the time of the committing of the grievance by the said city of Boston, as hereinafter next mentioned, was and from thence hitherto hath been and still is lawfully seized and possessed of a certain other wharf, with the appurtenances thereto belonging, situated in Sea street, in said Boston, known as Prices' wharf, and bounded as follows, to wit: northerly on the south side of Summer street, and the town dock at the end thereof, extending from the corner of Summer and Sea

streets, formed by the east side of Sea streets and by the south side of Summer streets, to the channel; then bounded on the north by Sea street, from the aforesaid corner to the land of David W. Bradlee and Ann, his wife, in her right, and extending from Sea street out to the channel; and then bounded easterly by the channel; and the plaintiff avers that said dock, forming the northerly boundary of the estate so by him possessed as aforesaid, was at the time of the committing the grievances hereinafter alleged, and for a long time prior thereto had been, a public dock, slip, or way, and by reason thereof he, the said Richardson, during all the time aforesaid, had, ought to have, and still ought to have, free egress with boats and vessels of every description upon, over, and through said dock, from the wharf so by him possessed as aforesaid, to the channel of the sea, and from said channel of the sea to his said wharf. Yet the said city of Boston, well knowing the premises, but wrongfully and unjustly contriving and intending to injure the said plaintiff in that behalf, and to deprive him of the use and benefit of said way and dock, whilst he, the said plaintiff, was so possessed of his said wharf, with the appurtenances as aforesaid, to wit, on the twenty-fourth day of August, in the year of our Lord one thousand eight hundred and forty-nine, and on divers other days and times between that day and the day of the purchase of this writ, wrongfully and injuriously placed and erected, and caused to be placed and erected, divers large quantities of wood and timber in and across the said way or dock, and kept and continued the said wood and timber, so placed and erected in and across the said way or dock as aforesaid, for a long space of time, to wit, hitherto, and thereby, during all the time aforesaid, the said way and dock were and still are greatly obstructed and stopped up, and the said plaintiff by means thereof could not, during all the time aforesaid *the said way and dock were and still are greatly obstructed and stopped up, and the said plaintiff by means thereof could not during all the time aforesaid*, or any part thereof, nor can he now, have or enjoy his said way or dock, as he of right ought *ought* to have done, and otherwise might and would have done, and has been and is by means of the premises deprived of the use, benefit, and advantage thereof.

3d. Also, for that whereas the said plaintiff, before and at the time of the commiting of the grievance by the said city of Boston as hereinafter next mentioned, was, and from thence hitherto has been and still is, lawfully seized and possessed of a certain wharf, with the appurtenances thereto belonging, situated in Broad street, so called, in said Boston, known as the "Bull wharf," and bounded thus: westerly or northwesterly on Broad street, there measuring sixty-two feet and three inches, or thereabouts; northerly or northeasterly on land formerly belonging to Peleg Tolman, there measuring six hundred and fifty-three feet, more or less; easterly or

southeasterly on low-water mark, there measuring fifty-two feet or thereabouts; southerly or southeasterly on a way or dock, there measuring six hundred and sixty feet, more or less; and by reason thereof he, the said plaintiff, during all the time aforesaid, ought to have had, and still of right ought to have, a certain way from his said wharf unto the channel or low-water mark, for himself and servants and his vessels to go, return, pass, and repass every year, and at all times of the year, at their free will and pleasure, as to the said wharf of the said plaintiff belonging and appertaining. Yet the said city of Boston, well knowing the premises, but wrongfully and unjustly contriving and intending to injure the said plaintiff in that behalf, and to deprive him of the use and benefit of said way and dock, whilst he, the said plaintiff, was so possessed of his said wharf, with the appurtenances as aforesaid, to wit, on the twenty-fourth day of August, in the year of our Lord one thousand eight hundred and forty-nine, and on divers other days and times between that day and the day of the purchase of this writ, wrongfully and injuriously placed and erected, and caused to be placed and erected, divers large quantities of wood and timber in and across the said way or dock, and kept and continued the said wood and timber, so placed and erected in and across the said way or dock as aforesaid, for a long space of time, to wit, hitherto, and thereby during all the time aforesaid, the said way and dock were and still are greatly obstructed and stopped up, and the said plaintiff, by means thereof, could not, during the time aforesaid, or any part thereof, nor can he now, have or enjoy his said way or *or* dock, as he of right ought to have done, and otherwise might and would have done, and has been and is, by means of the premises, deprived of the use, benefit, and advantage thereof. Also for that the plaintiff, before and at the time of the committing of the grievances by the said city of Boston, as hereinafter next mentioned, was, and from thence hitherto hath been and still is, lawfully seized and possessed of a certain other wharf, with the appurtenances thereto belonging, situated on "Broad street," so called, in said Boston, known as the "Bull wharf," and bounded thus: westerly or northwesterly on Broad street, there measuring sixty-two feet and three inches, or thereabouts; northerly or northeasterly on land formerly belonging to Peleg Tolman, there measuring six hundred and fifty-three feet, more or less; easterly or southeasterly on low-water mark, there measuring fifty-two feet, or thereabouts; southerly or southwesterly on the town way or dock, there measuring six hundred and sixty feet, more or less.

4th. And the plaintiff avers that said dock, forming the southerly boundary of the estate so by him possessed as aforesaid, was at the time of the grievance hereinafter alleged, and for a long time prior thereto had been, a public dock, slip, or way; and by reason thereof, he, the said plaintiff, during all the time aforesaid, had,

ought to have, and still ought to have, free egress with boats and vessels of every description upon, over, and through said dock from the wharf, so by him possessed as aforesaid, to the channel of the sea, and from said channel of the sea to his said wharf. Yet the said city of Boston, well knowing the premises, but wrongfully and unjustly contriving and intending to injure the said plaintiff in that behalf, and to deprive him of the use and benefit of said way and dock, whilst he, the said plaintiff, was so possessed of his said wharf, with the appurtenances as aforesaid, to wit, on the twenty-fourth day of August, in the year of our Lord one thousand eight hundred and forty-nine, and on divers other days and times between that day and the day of the purchase of this writ, wrongfully and injuriously placed and erected, and caused to be placed and erected, divers large quantities of wood and timber in and across the said way or dock, and kept and continued the said wood and timber, so placed and erected in and across the said way or dock as aforesaid, for a long space of time, to wit, hitherto, and thereby, during all the time aforesaid, the said way and dock were and still are greatly obstructed and stopped up; and the said plaintiff, by means thereof, could not during the time aforesaid, or any part thereof, nor can he now, have or enjoy said way or dock, as he of right ought to have done, and otherwise might and would have done, and has been and is, by means of the premises, deprived of the use, benefit, and advantage thereof.

5th. Also for that, before and at the time of the committing of the grievance by the said city of Boston, as hereinafter next mentioned, a certain wharf, with the appurtenances thereto belonging, situated in Sea street, in said Boston, known as Prices' wharf, and bounded northerly on the south side of Summer street, and the dock at the end thereof, extending from the corner of Summer and Sea streets, formed by the east side of Sea street and the south side of Summer street, to the channel, was in the possession and occupation of one Calvin Bullard, as tenant thereof to the plaintiff, the reversion thereof then and still belonging to the plaintiff, and then and there a certain other wharf, situated in Broad street, so called, in Boston, know nas the Bull wharf, and bounded southerly on the dock aforesaid to low water-mark, was then and there in the possession and occupation of Lecraw & Perkins, as tenants thereof to the plaintiff, the reversion thereof then and still belonging to the plaintiff, and by reason thereof the plaintiff ought at all times forever, after the determination of said tenancies, and the said tenants during the said tenancy, to have a certain way from east of said wharves unto the channel or low mater-mark, for himself, his servants and vessels, to go, return, pass and repass every year, and at all times of the year, of their free will and pleasure, as to said wharf belonging and appertaining. Yet the said City of Boston, well knowing the

premises, but contriving and intending wrongfully and unjustly to injure the plaintiff in his reversionary estate and interest of and in said respective wharves, with the appurtenances, while said wharves were so in the possession and occupation of said tenants, and while the plaintiff was so interested therein as aforesaid, to wit, on the twenty-fourth day of August, in the year of our Lord one thousand eight hundred and forty-nine, and on divers other days and times between that day and the day of the purchase of this writ, wrongfully and injuriously placed and erected, and caused to be placed and erected, divers large quantities of wood and timber, stone and earth, in and across the said way or dock, and kept and continued the said wood and timber, stone and earth, so placed and erected in and across the said way or dock as aforesaid, for a long space of time, to wit, hitherto, by means of which said several premises the plaintiff hath been and is greatly injured and prejudiced in his reversionary estate and interest of and in the said wharves respectively, with their appurtenances, so in possession of the said Lecraw & Perkins and Bullard, respectively, as tenants thereof to the plaintiff.

6. Also for that, before and at the time of the committing of the grievances by the said city of Boston, as hereinafter mentioned, a certain wharf, with the appurtenances thereto belonging, situated in Sea street, in said Boston, known as Prices' wharf, and bounded northerly on the south side of Summer street and the public or town dock at the end thereof, extending from the corner of Summer street and Sea street, formed by the east side of Sea street and the south side of Summer street, to the channel, was in the possession and occupation of one Calvin Bullard, as tenant thereof to the plaintiff, the reversion thereof then and still belonging to the plaintiff, and then and there a certain other wharf, situated in Broad street, so called, in said Boston, known as the Bull wharf, and bounded southerly on the public or town dock as aforesaid, to low water-mark, was then and there in the possession and occupation of Lecraw & Perkins, as tenants thereof to the plaintiff, the reversion thereof then and still belonging to the plaintiff; and the plaintiff avers that the dock aforesaid upon which said respective wharves bound as aforesaid was, at the time of the committing of the grievances hereinafter alleged, and for a long time prior thereto had been, a public way, slip, or dock, and by reason thereof the plaintiff ought at all times forever, after the termination of the tenancies aforesaid, to have free egress and passage, with boats and vessels of every description, upon, over, and through said dock or way, from the said respective wharves aforesaid, to the channel of the sea, and from the channel of the sea to said wharves. Yet the said city of Boston, well knowing the premises, but contriving and intending to injure the plaintiff in his said reversionary interest and estate of and in said respective wharves and their appurte-

nances, while said wharves were so in the possession and occupation of said tenants, and while the plaintiff was so interested therein as aforesaid, to wit, on the twenty-fourth day of August, in the year of our Lord one thousand eight hundred and forty-nine, and on divers other days and times between that day and the day of the purchase of this writ, (viz., the 13th day of September, A. D. 1850,) wrongfully and injuriously placed and erected, and caused to be placed and erected, divers large quantities of wood and timber, stone and dirt, in and upon and across the said way or dock, and continued the same, so placed and erected in and upon said way or dock, for a long space of time, to wit, hitherto, by means of which said several premises the plaintiff hath been and is greatly injured and prejudiced in his said reversionary interest and estate of and in said wharves respectively, with their appurtenances, so in the possession of said Lecraw & Perkins and Bullard, respectively, as tenants thereof of the plaintiff, to the damage of the said Richardson, as he says, the sum of fifty thousand dollars.

Whereupon a deputy of the marshal made his return; which is in the words following, viz:

UNITED STATES OF AMERICA,
Massachusetts District, ss.

BOSTON, *September 14th*, 1850.

Pursuant hereunto, I have this day summoned the within named City of Boston, defendant, to appear and for the purposes as within commanded, by giving in hand to Samuel F. McCleary, esq., "the city clerk," so called, a true and attested copy hereof for said city's appearance at court. I also gave in hand to Billings Briggs, esq., one of the "principal inhabitants" of said city, to wit, "an alderman," a like copy, for said city's appearance at court.

Services	$4 00
2 copies	4 00
Travel	0 05
	$8 05

P. RILEY,
U. S. Deputy Marshal, Mass. District.

This action was entered at the October term of this court, A. D. 1850, when the parties appeared by their respective attorneys; and on the 28th day of March, A. D. 1851, the plea of general issue was filed as follows, viz:

Circuit Court U. S., Massachusetts District—October T., 1850.

THOMAS RICHARDSON
vs.
CITY OF BOSTON.

And now the said defendant comes, &c., when, &c., and for plea says that it is not guilty of the grievances laid to its charge, in manner and form as the said plaintiff hath thereof complained against it; and of this puts itself upon the country.

By its attorney— PELEG W. CHANDLER.

And the plaintiff doth the like by his attorney.

CIRCUIT COURT U. S.,
Massachusetts District, ss.

October Term, 1850.

THOMAS RICHARDSON
vs.
CITY OF BOSTON.

And for a further plea in this behalf to the several counts in the plaintiff's declaration contained, the said city of Boston, by leave of the court for that purpose first had and obtained, says that the plaintiff his action aforesaid against it ought not to have or maintain, because it says that the said dock, way, and slip, at the northerly side of the Prices' wharf, and at the southerly or southeasterly side of the Bull wharf, in his said declaration mentioned, and in which, &c., now are, and at the said several times when, &c., were the close, soil, and freehold of the said city; wherefore the said city, in its own right, at the said times, when, &c., placed and erected, and caused to be placed and erected, the said quantities of wood and timber and stone, earth and dirt, in and across said way, slip, and dock, and kept and continued the same so placed and erected in and across said way, slip, and dock; in which, &c., so being the close, soil, and freehold of the said city, as it might lawfully do; and this it is ready to verify. Wherefore it prays judgment whether the said plaintiff his action aforesaid against it ought to have or maintain, and for its costs.

By its attorney— P. W. CHANDLER.

CIRCUIT COURT U. S.,
Massachusetts , ss.

October Term, 1850.

THOMAS RICHARDSON
vs.
CITY OF BOSTON.

And the said plaintiff, as to the said plea of the said defendant by it secondly above pleaded, saith that the same and the matters therein contained, in manner and form as the same are above pleaded and set forth, are not sufficient in law to bar or preclude him, the said plaintiff, from having and maintaining his aforesaid action thereof against it, the said defendant; and that he, the said plaintiff, is not bound by law to answer the same; and this he, the

said plaintiff, is ready to verify. Wherefore, for want of a sufficient plea in this behalf, he, the said plaintiff, prays judgment, and his damages by him sustained, on occasion of the committing of the said grievances in the said declaration mentioned, to be adjudged to him.

And for causes of demurrer the plaintiff shows:

1st. That the matters in said plea contained neither traverse or deny, confess or avoid, the facts set forth in either of the counts in plaintiff's declaration.

2d. That even if the matters in said plea did so traverse or deny the facts set forth in plaintiff's said counts and declaration, yet said plea amounts to the general issue.

And afterwards, to wit, on the first day of April, A. D. 1851, the plaintiff had leave to amend as follows, viz:

CIRCUIT COURT U. S.,
Massachusetts District.

October Term, 1851.

RICHARDSON
vs.
CITY OF BOSTON.

And now the said plaintiff, by leave of the court here, amends his declaration, by adding at the end of the last two counts—

And by means thereof the access of boats and vessels to said wharves and the egress therefrom to the sea has been interrupted and destroyed, and great quantities of earth, mud, and other materials have been floated to and deposited upon and near the said wharves, and thereby the use and enjoyment thereof and the value of the plaintiff's reversionary estate therein has been greatly injured.

And thence this action was continued unto the May term of this court, A. D. 1851; when and where the parties appeared, and having agreed upon a statement of facts, submitted the same to the court, as follows, viz:

CIRCUIT COURT U S.,
Mass. District.

May T., 1851.

THOMAS RICHARDSON
vs.
CITY OF BOSTON.

This is an action on the case against the city of Boston for erecting and continuing a nuisance in a certain ancient public dock, situate near the foot of Summer street, in Boston, between two wharves belonging to the plaintiff, and long known as the Price and Bull wharves. The structure complained of as a nuisance is

a large drain, built of timber, projects above the water at high tide, and in a great measure, but not entirely, prevents the access of vessels to both the plaintiff's wharves. To show the origin and history of this dock, which was admitted by the defendants to be an ancient public dock or highway, and to show the rights of the plaintiff, and those under whom he claims therein, the plaintiff offered the following evidence:

1st. The plans drawn by S. P. Fuller and verified by him.

2d. The following deeds, &c., in the line of title of the Bull wharf:

Gridley's possession, from the book of possessions, in Boston.

Gridley's liberty to wharf, March 31, 1673.

Gridley's restriction as to limits of wharf—not to wharf before towns, ground, and highway, March 2d, 1673–'4.

Gridley to Gill, 11 March, 1672.

Gill's liberty to wharf, May 2d, 1674.

Gill by will to Belcher, 7 Feb'y, 1678.

Act of town staking out way 30 feet wide from lower end of Gill wharf, Oct. 31, 1683.

Belcher to Dorby, 29 Aug., 1700.

Dorby's division, 1 Nov'r, 1744.

Pedigree of Mrs. Mary Robbins, daughter of Dorby, admitted.

Mary Robbins' division, setting off this wharf, &c., to J. D. Robbins, March 6th, 1802.

John D. Robbins to Thos. N. and John French and the pl'ff, 29 July, 1835.

John French to Richardson, (pl'ff,) 8 June, 1836.

Thos. N. French to Alger, 27 Oct., 1836.

Alger to Richardson, (pl'ff,) 10 Feb'y, 1848.

3. The following deeds, &c., in the line of title of the Price wharf:

Baxter's possession, from the book of possessions, in Boston.

Baxter to Bull, 12 Dec., 1668.

Bull—liberty to wharf, May 25th, 1674.

Heirs of John Bull to Jon'a Bull, 3 Ap'l, 1724.

Marriage of Elizabeth Bull, the only daughter of Jon'a Bull, to Royer Price, 14 Ap'l, 1735.

Elizabeth Price to Lausan Valentine, July, 1820.

Andrew Price to same, 20th July, 1821.

Osgood, guardian of heirs of Valentine to John French, 5th June, 1835.

John French to pl'ff, 8 June, 1836.

4th. Extract from town records, showing Summer street extends to sea.

5th. Act of legislature, enabling Richardson to extend Bull wharf, and lay vessels at sides, &c., with the proviso in the act contained.

The plaintiff asserted that the existence of the obstructions complained of, and also the discharge through the same of the foul matter collected and discharged by the sewer, caused an accumulation of mud and other substances to be deposited by the tides on and near his said lands and wharves, six or eight feet deep, so as permanently to injure the same; but the evidence respecting this on each side was not put in, for the reason which will hereafter appear.

It appeared that the said Bull wharf was under a written lease for a term expiring April, 1851, and that the said Price wharf was held by tenants at will; and the plaintiff offered to prove, that in consequence of the erection of the alleged nuisance he had necessarily reduced the rents.

The defendants put into the case the following papers:

Extract from selectmens.

Records concerning drain in Summer street, 7 award in case of Dorby vs. Adams.

List of proprietors of common shore. (Objected to by plaintiff, as not admissible in evidence.)

Orders of notice as to same.

A paper concerning the same, the admissability of which as evidence is denied by the plaintiff; assessment (so purporting) of cost of repairs of said drain, the admissibility of which is denied by the plaintiff; also appointment of a committee to inspect repairs of same.

Liberty to Robbins to build a head to dock, fill up the same—he laying a common shore therein.

Order of notice, &c., concerning common shore in Summer street; plaintiff objects to this as evidence.

Assessment of costs of repairs. Same objection is made.

Notice and petition concerning the same. Same objection is made.

Petition of the pl'ff and notice, &c., as to extending the common shore.

Petition as to relaying drain.

Records of municipal court. (Objected to by plaintiff, as inadmissible.)

City ordinances as to the board of health. (Objected to by plaintiff, as inadmissible.)

Document as to extending the shore. (Objected to by pl'ff, as inadmissible.)

Certain orders as to obstructions in Summer street. (Objected to by plaintiffs, as inadmissible.)

Liberty to sq. this land to wharf.

Extract from town records, concerning Sea street.

The papers before mentioned in relation to this drain, which are objected to by plaintiff, were produced at the trial by the superin-

tendent of common sewers, in whose custody they have been for many years. The defendants also offered certain oral evidence, a report of which is hereto annexed; the deposition of Joseph Jones, taken by defendant, and tho' not filed, yet loaned to plaintiff's counsel before trial, is to be put into the case, if plaintiff has by law the right to use it.

It was agreed that the case should be taken from the jury, and that the court should determine:

1st. Whether upon the facts the plaintiff is entitled to recover any damages.

2d. If not, whether he would be so entitled upon proof that the alleged nuisance causes mud and other substances to be deposited and accumulated by the tides at the end and sides of his wharf, below and near low-water mark, so as to injure the value thereof.

3d. Whether he would be so entitled upon proof that the drain in question might have been so constructed as not to obstruct the access of vessels to the plaintiff's wharves, or to cause the deposit and accumulation aforesaid.

4th. What is the measure or rule of damages, if any, upon the the determination of these questions—if the court shall be of opinion that the plaintiff is or may be entitled to recover, the case is to be submitted to a jury, under such instructions as the court may think fit; otherwise the plaintiff is to be non-suit.

Oral Testimony of Defendants.

Samuel Leeds. Have lived in Boston since 1808; resided first near the foot of Summer street; and my place of business was near the head of Bull wharf, on the south side.

There was a large dirt catcher put there to catch the surface dirt; then the city did not clear the street, and the countrymen caught the surface drainage. I don't know anything about the under ground drainage; the top water came down in very large quantities, and run into the dock.

E. P. Dobbear. Have lived in Boston about sixty years; have known Bull and Price wharves well since 1820. I occupied the Price wharf; was a shipwright and calker. There was a drain down in the dock there when I went there, about six feet below the bulk head or street and about on a level with the dock or town slip—we used to call it the town slip; the top water came down into a cesspool, and the countrymen came and took up the manure. The catcher was up above the dock; when it was full it run over into the dock.

An engine-house stood over the dock; can't tell the year, but it was, say 1822; my north line came on the line of the slip. It was admitted by pl'ff that the general system of drainage is into the sea.

Stephen P. Fuller, called by plaintiff, identified the plans. The first time I surveyed there was in 1822; there was a drain there of the ordinary size of common sewers at that time. It drained the

houses to a considerable extent, or the surface water was not let into it. The present drain is three or four times as large. The present drain drains from Fremont st., Winter st., and Washington st., and the surface water is let into it.

For the purpose of the present hearing it is agreed, that the enlargement of the drain to its present dimensions in the neighborhood of the dock was made in 1836, and through the rest of Summer street in 1841. The top water was let into the drain at the same time.

P. W. CHANDLER,
For Def't.
S. BARTLETT,
For Pl'ff.

And thence this action was continued unto the October term, A. D. 1851; when the following agreement of parties was filed, to wit:

RICHARDSON
vs.
CITY OF BOSTON.

It is agreed, that upon the decision of this case in this court it shall be placed in such position as shall enable the party against whom it may be to take the case to the Sup. Court of the U. S., if such party shall so elect, without a new trial, upon any other subject, except for damages under the ruling of the court.

S. BARTLETT,
For Pl'ff.
P. W. CHANDLER,
For Def't.

And from that term this action was continued unto the May term, A. D. 1852; when the pl'ff had leave to amend his declaration as follows, viz:

RICHARDSON
vs.
CITY OF BOSTON.

U. S. Circuit Court.—May Term.

And now the pl'ff amends his declaration by leave of the court here, as follows: by adding to the amendment of the two last counts thereof, heretofore filed, the words following, "and pl'ff has been oblige to reduce and has reduced, and has been unable to get and obtain, the rents which he has formerly been accustomed to obtain or that he was entitled to receive from said wharves.

And by adding the same words at the end of each of the other counts in said declaration.

And by adding after the words "Bullard," the words "certain Robert Emerson and John Emerson," in each of the counts.

And afterwards, at that term, to wit, on the fourth day of October, 1852, the def'ts, by their attorney, filed the following petition, viz:

Circuit Court of U. S., first circuit, dist. of Massachusetts.—May Term, 1852.

THOMAS RICHARDSON
vs.
CITY OF BOSTON.

And now the defendants come into court and respectfully represent, that the above entitled action is a suit brought by the plaintiff, alleging himself to be a citizen of the State of Rhode Island, against the city of Boston, a corporation established, and whose citizens reside within the said district of Massachusetts, for the recovery of damages for an alleged nuisance or encroachment upon certain rights of way or easments claimed by the pl'ff to be appurtenant to certain wharves and tenements, of which he declares himself to be the owner, and which damages are laid in his writ and declaration at the sum of fifty thousand dollars; that these defendants, denying that the plaintiff has any such rights of way or easments appurtenant to any such wharves or tenements as in his said writ and declaration alleged, have pleaded that they are not guilty, and that the case now stands for trial by the jury.

That by the laws of the Commonwealth of Massachusetts, all the citizens or inhabitants of any city or town within the same, and all their estates, real and personal, are liable to be taken on execution for the payment of any debt due from such city or town to the plaintiff in such execution.

And the said citizens or inhabitants are liable to be taxed and assessed in order to raise the means of paying and discharging such debts, and that the damages, if any shall be recovered by the pl'ff in this suit, must be paid for out of moneys to be raised by levy of an execution, to be issued therein upon the estates of the said city, or of some one or more of the inhabitants thereof, or by damages to be assessed upon them—so that every inhabitant or citizen of said city of Boston liable to taxation is directly interested in the result of said suit.

That the honorable the associate judge of the Supreme Court of the United States for this circuit, is incompetent to sit in the trial of said suit, and has declared so to do, by reason of having been heretofore of counsel of one of the parties thereto; and that the honorable the judge of the district court *in* an inhabitant and citizen of said city of Boston, paying taxes therein, and the amount of whose taxes must be in greater or less degree dependent upon the judgment that shall be finally rendered therein, and so is directly interested in the result thereof.

Wherefore the defendants humbly pray that process may issue for the removal of the said suit to some neighboring circuit of the

Supreme Court of the United States for the trial thereof, pursuant to the statute in such case made and provided.

PELEG W. CHANDLER,
Of Counsel for the Defendants.

And thence this action was continued unto this present term. And now it is ordered by the court, that the clerk do enter on the record of this case the fact that the Honorable Benjamin R. Curtis, one of the associate justices of the Supreme Court of the United States, who is assigned to this circuit, has been of counsel with the said plaintiff while practicing at the bar, and therefore declines to set in this case; and also the further fact, that the Hon. Peleg Sprague, district judge of the United States for this district, is an inhabitant of the city of Boston, and as interested in the result of this suit, and therefore declines to set in this case.

And afterwards, at this term, the plaintiff, by his attorney, files the following motion, viz:

CIRCUIT COURT OF THE UNITED STATES,
Massachusetts District.

THOMAS RICHARDSON
vs.
CITY OF BOSTON.
} October Term, 1852.

And now, it having been entered of record in this suit that both the judges of this court are incompetent by law to try the same, either by reason of being concerned in interest therein or having been of counsel in said cause, the plaintiff moves the court here, that an order be passed that an authenticated copy of said entry, with all the proceedings in said suit or action, be forthwith certified to the most convenient circuit court in the next adjacent State.

By S. BARTLETT,
His Attorney.

Whereupon, to wit, on the 15th day of October, A. D. 1852, it is ordered that an authenticated copy of the record and all the proceedings in this suit be forthwith certified to the circuit court next to be holden at Providence, within and for the district of Rhode Island, on the fifteenth day of November next, the same being the most convenient circuit court in the next adjacent State.

UNITED STATES OF AMERICA,
Massachusetts District, ss.

I, Isaac O. Barnes, clerk of the circuit court of the United States for the first circuit, Massachusetts district, do hereby certify that the foregoing is a true copy of the record of the case of Thomas Richardson versus The City of Boston.

In testimony whereof I have hereunto subscribed my name, and affixed the seal of the said court, at Boston, the 2d day [L. S.] of November, A. D. 1852, and in the 77th year of the independence of the United States of America.

ISAAC O. BARNES, *Clerk.*

And the case being continued to said June term, 1853, it is called for trial, and argued by counsel upon the agreed statement of facts filed therein; and the following opinion was delivered by the court thereon.

Circuit Court R. I. District.—June Term, 1853.

THOMAS RICHARDSON
vs.
CITY OF BOSTON.

Opinion of J. Pitman, District Judge.

I am satisfied from the evidence submitted to the court that the plaintiff, at the time of this action, was and is the owner of the Price wharf and the Bull wharf, as stated in his declaration; that between these wharves there is and has been an ancient public dock or highway, and that the plaintiff, at the time of the obstruction by him complained of, had a reversionary right to free egress and passage with boats and vessels upon, over, and through said dock or way, from the said respective wharves to the channel of the sea, and from the channel of the sea to the said wharves.

It is admitted that the dock is an ancient public dock or highway and that the structure complained of in a great measure prevents the access of vessels to both the plaintiff's wharves; but it is justified on the part of the city of Boston as necessary to be done for the health of the city, and that it was done under the authority and by the order of the board of health of said city. Whether the city has a right to fill up this dock for the purposes of a travelled street, and if so, whether the injury to the plaintiff by such an act must be compensated in damages, are questions which, in my view, do not arise in this cause upon the agreed statement of facts. The statement of facts does not show that the city of Boston intends to fill up this dock and to make it a street for travel; the mayor and aldermen have not ordered this to be done, but only that the drain should be extended "five hundred feet in the direction of the channel, over the land and flats belonging to the city;" and there is nothing to induce us to suppose that this act was a beginning to make a street by filling up this ancient dock or way. On the contrary, by a copy of the doings of the mayor and aldermen, on the 21st Aug't, 1849, in reference to another obstruction said to be caused by the plaintiff, it appears, that after a personal inspection of the premises they declared their opinion that the way "in that

part of Summer street, as anciently described and laid out, lying between Broad street and the sea, that the said way ought to be kept open from Broad street to the sea."

The right of drainage, as used from 1710 to 1836 by those being in Summer street, under the direction and by permission of the town of Boston, as appears by the records in the agreed statement of facts, does not, in my view, justify the extraordinary structure which the plaintiffs complain of; and if this be necessary for the purpose of draining Tremont street, Winter street, and Washington street, (see testimony of Stephen P. Fuller,) and to prevent those nuisances for which the city was indicted in December, 1848, and June, 1849, an extraordinary state of circumstances may call for extraordinary remedies: of this necessity the mayor and aldermen of the city of Boston, as constituting the board of health, are the proper judges, and are not to be rejudged by this court. But in reference to the rights of citizens, whose property may be injuriously affected by what may be deemed necessary by the board of health for the health of the city, the courts of justice established for the vindication and preservation of private rights are the judges. And the question here is, not whether the structure complained of by the plaintiff were necessary or not for the health of the city, but whether the right which the plaintiff had to pass and repass from his wharves to the sea, and from the sea to his wharves, can be taken from him without just compensation, under the constitution of Massachusetts. I am of opinion that this right cannot be taken from the plaintiff without compensation, and that the plaintiff is entitled to recover against the city of Boston whatever damages he may prove under the sixth count of his declaration.

And the case was then tried pursuant to the agreed statement of facts, and committed to the following jury: William Pinnegar, foreman, Stillman Welch, Seth C. Bradford, James Burlingame, John T. Tilly, Jeremiah Hazard, John Hambly, James Lewis, James O. Sweet, Jesse B. Crandall, George O. Browning, George W. Barney—who came into court, and rendered a sealed verdict; which is duly affirmed in the words following, to wit:

The jury find the def'ts are guilty in manner and form as alleged in the sixth count of the plaintiff's declaration, and assess the damages at twelve hundred and nine dollars and sixty-nine cents.

(Signed) WM. PINNEGAR, *Foreman.*

Judgment.

Whereupon it is considered by the court here, that the plaintiff have and recover of the def'ts the sum of twelve hundred and nine dollars and sixty-nine cents debt, and costs of suit, taxed at eight hundred and seventeeen dollars and eighteen cents, amounting in all to the sum of two thousand and twenty-six $\frac{87}{100}$ dollars.

UNITED STATES OF AMERICA,
Rhode Island District, ss.

CLERK'S OFFICE CIRCUIT COURT,
At Providence, September 17th, 1855.

I, Henry Pitman, clerk of the circuit court of the United States for the first circuit, within and for the District of Rhode Island, do hereby certify that the foregoing twenty-six pages contain a true copy from the records in the case 22, Thomas Richardson vs. The City of Boston, disposed of at the June term of said court, A. D. 1853, on the nineteenth day of said term, to wit, July 20th, 1853—duly examined and compared.

In testimony whereof I have hereunto set the seal of said court [L. S.] and my hand, on the day and year above written.

HENRY PITMAN, *Clerk.*

And further to maintain and prove the issue on his part, the plaintiff put in evidence the documents and testimony following:

1.—*Richard Gridley's Possession in Boston.*

One house and lot, bounded with the streets south and west, the bay easterly, and John Harrison northerly; also another lot, bounded with Robert Turner northwest, John Harrison southwest, the bay southeast, and the fort northeast.

John Harrison—his Possession in Boston.

One house and lot, bounded with Richard Gridley southerly, the bay easterly, Richard Gridley northerly, Robert Turner westerly.

A true copy from the book of possesions, in the town of Boston.

Attest: S. F. McCLEARY, *City Clerk.*

2.—*Gridley's Liberty to Wharf.*

31*st March*, 1673.

At a meeting of Capt. Thomas Lake, John Joyliff, Mr. Hezekiah Usher, Mr. Thomas Brattle, Capt. James Oliver, Capt. William Davis, Mr. John Richards, libertie is granted to Richard Gridlie to wharfe before his owne land, in proportion with other men.

A true copy of records of the town of Boston.

Attest: S. F. McCLEARY,

31st March, 1673. *City Clerk.*

3.—*Prohibition to Gridley to Wharf.*

March ye 2nd, 1673-'74.

Whereas, upon the 31st of March, 1673, libertie was granted to Richard Gridley, to wharf before his own land in proportion with other men, and he hath lately for ends stated put a proportion upon the flatts, not only before his own lands, but the towns, ground and highway adjoining his land, it is hereby ordered that the

said Gridley do not proceed in wharfeing there, without the consent and approbation of ye selectmen first had and obtained, upon the penalty of twelve shillings.

A true copy of records of the town of Boston.

Attest: S. F. McCLEARY,
City Clerk.

4.—*Gridley's Deed to John Gill.*

To all people to whom this present writing shall come, Richard Gridley, of Boston, in the county of Suffolk, in the Colony of Massachusetts, in New England, sendeth greeting:

Know yee, that I, the said Richard Gridley, for and in consideration of the sum of twenty-five pounds, of lawful money of New England, to mee in hand, at and before the sealing and delivery of these presents, by John Gill, of Boston aforesaid, mariner, well and truly payd, the receipt whereof I doe hereby acknowledge, and myselfe therewith fully satisfied and contented, and thereof and every of every part thereof, do hereby acquitt and discharge to said John Gill, his heirs, executors, administrators and assigns forever, by these presents, have given, granted, bargained, sold, aliened, enfeoffed, and confirmed, and by these presents do fully, clearly, and absolutely give, grant, bargain, sell, alien, enfeoff, and confirme unto the s'd John Gill all that piece and parcil of land scituate, lying, and being neere unto the s'd Richard Gridley's lime-kiln, in the southerly end of the s'd town of Boston, being butted and bounded westerly with the land of James Flood, extending itself by the said Flood's line forty foot northerly with the land of Robert Carver, southerly with the highway, and easterly with the sea, ranging from the said James Flood's line to low water-mark, excepting only, and it is hereby reserved out of the said grant, a cartway through the said piece of land, at the end of forty foot, to be measured downward from the said James Flood's line towards the sea, for the use and benefit of the said Robert Carver's house:

To have and to hold the said parcell of land, with all the profits, privileges, and appurtenances to the same belonging or in anywise appertaining, and also all writings, deeds, and evidences touching and concerning the premises onely, or onely any part thereof, unto the said John Gill, his heirs, executors, administrators and assigns, and to his and their ounе sole and proper use and behoofe forever.

And I, the said Richard Gridley, doe for mee, my heirs, ex'ors and administrators, covenant, promise, and grant by these presents, that at the tyme of their sealing and delivering of these presents, I am the true, sole, and lawful ouner of all the above bargained premises, and am lawfully seized of and in the same, and every p'tt thereof, in my ounе proper right, and that I have in myeelfe fulle power, good right, and lawful authority to grant, sell,

convey, and assure the same unto the s'd John Gill, his heirs' ex'ors. ad'mrs and assigns, as a good, perfect, and absolute estate of inheritance in fee simple, without any con li'n, reserv'n, or limita'ion whatsoever, so as to alter, change, defeat, or make void the same; and that the s'd John Gill, his heirs, executors, administrators and assigns, shall and may, by force and virtue of these presents, from tyme to tyme and at all times forever hereafter, lawfully, peaceably, and quietly, have, hold, use, occupy, possess, and enjoy the above granted premises, with the appurtenances, without any lawful let, sute, troble, denyall, interruption, or disturbance of me, the s'd Richard Gridley, my heirs, ex'ors, adm'rs or assigns, or of any other person or persons whatsoever, lawfully clayming by, from, or under us, or any of us, or by our or any of our means, act, consent, title, privity, or procurement.

And I, the said Richard Gridley, for me, my heirs, executors and administrators, and every of us, do further covenant, promise, and grant, by these presents, that the s'd parcell of land, with all the rights, privileges, members and appurtenances, are free and cleare, and freely, clearely, acquitted, exonerated, and discharged of and from all and all manner of former and other gifts, grants, bargains, sales, leases, mortgages, jointures, dowers, titles of dowers, judgements, executions, entayles, forfeitures, and of and from all other titles, trobles, charges, and incumbrances whatsoever; and Grace, the wife of me, the said Richard Gridley, doth by these presents, freely, fully, and absolutely give, yield up, and surrender all her right, title, dower, and interest which she had, hath, might or should have had, of, in, and to the above mentioned premises, or any part thereof, unto the said John Gill, his heirs, executors, administrators and assigns forever.

And I, the said Richard Gridley, and Grace, my wife, shall and will be reddy and willing at all tymes to give, and will give, unto the said John Gill, his heirs, executors, administrators and assigns, such further and ample assurance of all the afore granted premises as in law or equity can be desired or required.

In witness whereof we, the said Richard Gridley and Grace Gridley, have hereunto set our hands and seals, the eleventh day of March, in the year of our Lord, according to the computation of the Church of England, one thousand six hundred and seventy-two, annoy regni regis car. secundi XXV.

Richard R. Gridley, his mark and seal append't.
The mark of P. Grace Gridley, and a seal append't.
Signed, sealed, and delivered by

RICHARD GRIDLEY.

In the presence of us—
JOHN BULL,
WILLIAM PITMAN,
WILLIAM PINKNEY,
JOHN HAYWARD, Sen

The within mentioned land was staked out, and possession by turf and twig given to the said John Gill by the said Richard Gridley, this 6th of Decem'r, 1763, in presence of us, Elisha Hutchinson, Thomas Bligh, Robt. R. C. Carver, his marke.

This deed was acknowledged by Richard Gridley and Grace, his wife, Dec'r 6th, 1673, before me, Edward Tyng, ass't.

Recorded and compared 30th 1 mo., '74, p'r ffru.

GRACE BENDALL, *Recorder.*

A true copy from Suffolk Records of Deeds, lib. 8. fo. 352.

Attest: HENRY ALLEINE, *Reg.*

5.—*John Gill's Liberty to Wharf.*

May ye 2d, 1674.

Libertee is granted to Thomas Peck to wharfe upon the flatts before his own land, near Richard Gridlie's, fortie-five foot in breadth, according to his upland, and is now staked out; also to Robert Carver to wharf sixtie foote in breadth, according to his land above the flats adjoining to Thomas Pecke, now also staked out; and whereas, upon the 31st of March, 1673, libertee was granted to Richard Gridlie to wharfe before his land, and upon the second of March, 1673–'74, a prohibition thereof was ordered for staking it out beyond his bounds, it is now ordered that John Gill, of Dorchester, (to whom the said Gridley hath sould the privilege of the said flats,) shall have libertee to wharfe forty feet in breadth before ye said Gridley's land, next to Robert Carver's, as it is now staked out, and is twentie-eight foote northward from a great rock lying upon the flatts before the highway.

A true copy of the records of the town of Boston.

Attest: S. F. McCLEARY,
City Clerk.

6.—*John Gill's Will.*

In the name of God, amen. The eighth day of October, anno Domini one thousand six hundred seventy and eight, I, John Gill, of Boston, in the colony of the Massachusetts, in New England, yeoman, being weak and infirm of body, but of sound and perfect memory, praised to Almighty God for the same, knowing the uncertainty of this present life, and being desirous to settle that outward estate the Lord hath lent me, do make and ordain this my last will and testament, in manner and form following (that is to say): First and principally, I commend my soul into the hands of Almighty God, my Creator, hoping to receive full pardon and remission of all my sins and salvation through the atonements of Jesus Christ, my Redeemer, and my body to the earth, to be buried in such decent manner as to my executrix hereafter named shall be thought meet and convenient; and as touching such wordly estate

as the Lord hath lent me, my will and meaning is, the same shall be employed and bestowed as hereafter in and by this my will is expresst:

Imp'o. I do hereby revoke, renounce, and make void all wills by me formerly made, and declare and appoint this my last will and testament.

Item. I will that all the debts that I justly owe to any manner of person or persons whatsoever shall be well and truly paid, or ordained to be paid, in convenient time after my decease, by my executrix hereafter named.

Item. I give and bequeath unto my loving daughter Rebecca Belcher, wife of Joseph Belcher, the sum of five pounds per ann'm, to be paid unto her by my executrix hereafter named, during the natural life of my said daughter, provided it appear to my overseers hereafter named that she hath real need of the same for buying her apparel and other necessaries.

Item. I give and bequeath unto my said daughter Rebecca, and to the children of her body lawfully begotten, and to their heirs and assigns forever, all the housing and land that is now in the tenure and occupation of my son-in-law Joseph Belcher, or his assigns. And my will is, that the said housing and land hereby bequeathed to my said daughter shall remain in the hands and under the management of my said overseers hereafter named, for the the use of my said daughter and her children during the term of the natural life of my son-in-law, Joseph Belcher.

Item. My will is, that in case my said daughter Rebecca survive her husband, the said Joseph Belcher, and after his decease she stand in need of more for her necessary maintainance than the annual income of the estate hereby bequeathed to her, then she shall have, and hereby have and hereby hath, liberty to sell any part of the said housing or land hereby given her for her necessary supply.

Item. I give and bequeath unto my dear and well beloved wife, Anna Gill, the use, benefit, and improvement of the full remainder of my real and personal estate, whatsoever it is or wheresoever it may be found, during the term of her widowhood.

Item. I give and bequeath all that estate hereby given and bequeathed unto my said wife during her widowhood unto my grandchild, Joseph Belcher, (who now liveth with me,) and to the heirs of his body lawfully begotten, and to their heirs forever, and for default of such issue, then my will is, that the same shall be equally divided among the children of my said daughter, Belcher, to be and remain to them and their heirs forever; provided always, that my said grandchild, Joseph Belcher, pay, or cause to be paid, unto each of the children that are now living of my said daughter, Rebecca, the sum of twenty pounds ster., in cattle, provisions, or income of the estate, as they come of age.

Item. My will is, that if either or any of the said six children die before they attain the age of twenty-one years, or day of marriage, that then the twenty pounds hereby bequeathed to such child or children shall be equally divided between the survivors of them.

Item. My will is, that my said wife, Anna Gill, shall keep and maintain my said grandchild at school until he attain the age of fourteen years, and that then he shall be put an apprentice unto some good trade, such as he shall desire, by advice and consent of my overseers hereafter named.

Item. My will is, that in case my said wife shall see meet to marry again, that then she shall have only the use, benefit, and improvement of one-half part of the said remainder of my estate during her life; and that she then give unto my overseers hereafter named good and sufficient security to keep the housing, fencing, and wharfing that belongs to that half part of my estate that she is to enjoy in good repair during her lifetime, and to return all the said half part of my said estate to my said grandchild, or others hereby interested therein, in good repair and without trouble, at her decease; and that on the day of my said wife's marriage my overseers hereafter named shall take into their hands the other half part of the said remainder of my said estate, to be improved by them for the use of my said grandson, Joseph Belcher, until he attain the age of twenty-one years. Also my will is, that in case my said wife shall during her widowhood stand in need of a further supply than the income of the said estate, that then she shall have and hereby hath liberty to sell so much of that part of my estate that she is to have the use of as is needful for her comfortable supply.

Item. I do hereby nominate, constitute, and appoint my dear wife the sole executrix of this my last will and testament.

Item. I do hereby nominate and appoint my loving friends, Mr. Thomas Mighell, of Milton, Deacon Jacob Elliott, of Boston, and my brother, Roger Billings, of Dorchester, the overseers of this my last will, hereby desiring them to use their utmost care and endeavor that this my will be punctually observed and performed; and also, that my said overseers shall be fully paid for what trouble they be at and what time they spend in the concerns of my estate; and that, if any one of my overseers die, then the other two to choose another in their room, who is hereby invested with the like power as one of my said overseers; and so from time to time, as need shall require.

In witness whereof I, the said John Gill, have hereunto set my hand and seal, the day and year first above written.

his
JOHN GILL, ⋈ and [SEAL.]
mark.

Signed, sealed, and what is contained in these three pages was published by the above named John Gill, as his last will and testament, in presence of us—

JOSEPH HOLMES,
JOHN BULL,
JOHN HAYWOOD, Sr.

Joseph Holmes and John Haywood made oath in court, 7 Feb'y, 1678, that they *was* present and did see John Gill sign and seal, and heard him publish this instrument to be his last will, and that when he did so he was of a disposing mind, to their best understanding.

Attest: JOHN ADDINGTON, *Clerk.*

A true copy. Attest:

OLIVER W. B. PEABODY, *Reg.*

7.—*Staking out Way by Selectmen.*—1683.

October 31*st*, 1683.

The selectmen all mett this day: staked out a highway for the town's use on the southerlie side of ye land belonging to the late John Gill, deceased, being thirtie ffoote in breadth from the lower corner of said Gill's wharfe next the sea; also the same day staked out another highway for the town's use on ye easterlie side of the proprietor's lands, which lyeth between the above said highway and ye way that leads from Deacon Henry Allen's to ye windmill, which way is in breadth from the proprietor's lands ffiftie ffoote towards the sea-shore.

The fflatts and land between this said highway into the sea is granted to the proprietors of ye lands, w'ch are abuttors on the s'd way in an equall proportion to their several fronts on s'd way; always provided, the said proprietors and abuttors maintain in good repairs the said way at their proper cost and charge.

It is also ordered y't ye owners or proprietors of ye lands (above mentioned) latelie belonging to John Gill, deceased, do remove the ffence which now stands in ye highway, and that it be done within six months, on the penaltie of twenty shillings per week for every week's default.

A true copy from the records of the town of Boston.

Attest: S. F. McCLEARY,
City Clerk.

8.—*Belcher to Dorby.*

To all people unto whom this present deed of sale shall come, Joseph Belcher, of Dedham, in the county of Suffolk, within the province of the Massachusetts bay, in New England, clerke, sendeth greeting:

Know ye, that I, the s'd Joseph Belcher, for and in considera-

tion of the sum of one hundred and seventy pounds, curr't money of New England, to me in hand well and truly paid, at and before the ensealing and delivery of these presents, by Eleaser Dorby, of Boston, in the county of Suffolk and province aforesaid, mariner, the receipt whereof, to full content and satisfaction, I doe hereby acknowledge, and thereof and of every part and parcel thereof, doe acquit, exonerate, and discharge the s'd Eleazer Dorby, his heirs, ex'rs, admr's and assigns, and every of them forever, by these presents; as also for divers other good causes and considerations me hereunto moving, I, the said Joseph Belcher, have given, granted, bargained, sold, aliened, enfeoffed, conveyed and confirmed, and by these presents, for myself and my heirs, doe fully, freely, clearly and absolutely give, grant, bargain, sell, alien, enfeoff, convey and confirm, unto the said Eleazer Dorby, his heirs and assigns forever, all that my messuage or tenement, with all the land and ground whereon the same doth stand and is thereunto belonging and adjoining, and the wharf, beach, and flatts that lyeth before the same to the seaward, below the cartway which runneth between said land and wharf, along to the housing and land John Adams, mauleter, situate, lying, and being at the southerly end of the town of Boston aforesaid, heretofore the inheritance of my grandfather, John Gill, late of Boston aforesaid, yeoman, dec'd, and by him left unto me, and by his last will and testament, and is butted and bounded on the westerly end by land of the late James Flood, dec'd; on the southerly side of the town highway, leading down to the water side; on the easterly end by the sea or salt water; and on the northerly side by the land, beach, and flatts of the said John Adams, (heretofore appertaining to one Robert Carver, since dec'd,) or however otherwise bounded or reputed to be bounded, measuring in breadth at the westerly end sixty-one feet eight inches, or thereabouts; and from the said Flood's line to extend by the town's street or highway, down to the aforesaid cartway forty foot, and in breadth upon the said cartway to the land of the said Adams, sixty-one foot eight inches, or thereabout; and from thence to extend in length up from the land of the said Adams to the land of the said Flood forty-four foot and one-half; and the said wharf, beach, and flatts is to extend in length from the lower part of the said cartway eastward, down to low-water mark, where it is to measure in breadth fifty-two feet, or thereabout—excepting only, and it is hereby reserved out of this present grant, the aforesaid cartway for the use of the said John Adams' house—together with all and singular the houses, edifices, buildings and fences standing thereon, yard, garden, well, water, water-courses, profits, privileges, rights, commodities, hereditaments, emoluments, and appurtenances whatsoever to the said messuage or tenement, land, wharfe and premises belonging, or in anywise appertaining, or therewith now or heretofore used, occupied or enjoyed, accepted, reputed, taken or known

as part, parcel, or member thereof, or of any part thereof, and the reversion and reversions, remainder and remainders thereof, and also, all the estate, right, title, and interest, inheritance, use, possession, property, claim, and demand whatsoever of me the said Joseph Belcher, and my heirs, of, in, and to the same, and every part thereof, with all deeds, writings, and evidences relating thereto: to have and to hold all the above and before mentioned granted and bargained premises, with the appurs. and every part and parcel thereof, unto the said Eleazer Dorby, his heirs and assigns forever, to his and their own sole and proper use, benefit and behoof, from henceforth and forever more, absolutely, without any manner of condition, redemption, or revocation in anywise.

And I, the said Joseph Belcher, for me, my heirs, execu'rs, and adm'rs, do hereby covenant, promise, grant, and agree, to and with the said Eleazer Dorby, his heirs and assigns, in manner and form following, that is to say, that I, the said Joseph Belcher, at the time of the ensealing, and until the delivery of these presents, am true, sole, and lawful owner of the afore granted premises, and stand lawfully seized thereof in my own proper right of a good, sure, and indefeasible estate of inheritance in fee simple, without any manner of condition, reversion or limitation of use or uses whatsoever, so as to alter, change, defeat, or make void the same, having in myself full power, good right, and lawful authority to grant, sell, convey, and assure the premises unto the said Eleazer Dorby, his heirs and assigns, in manner and form aforesaid, and according to the true intent and meaning of these presents; and that the said Eleazer Dorby, his heirs and assigns, shall and may, by force and virtue of these presents, from henceforth and forever hereafter, lawfully, peaceably and quietly have, hold, use, occupy, possess, and enjoy the above granted and bargained premises, with the appur's free and clear, and clearly acquitted, exonerated, and discharged of and from all and all manner of former and other gifts, grants, bargains, sales, leases, releases, mortgages, jointures, dowers, judgments, executions, entails, fines, forfeitures, seizures, anemiaments, and of and from all other titles, troubles, charges, and incumbrances whatsoever. And further, that I, the said Joseph Belcher, for myself, my heirs, exec'rs, adm'rs, and every of them, doe hereby covenant and grant to warrant and defend all the above granted and bargained premises, with the app'rs, and every part and parcel thereof, unto the said Eleazer Dorby, his heirs and assigns forever, against the lawful claims and demands of all and every person and persons whomsoever, and at any time or times hereafter, on reasonable request or demand of the said Eleazer Dorby, his heirs or assigns, to give and pass unto him and them forever (all his and their proper costs) such further and ample assurance and confirmation of the premises as in law or equity can or may be reasonably devised, advised or required.

In witness whereof I, the said Joseph Belcher, and Abigail, my present wife, (in testimony of her full consent to these presents, and full relinquishment of all her dower and power of thirds, of, in, and to the above granted premises,) have hereunto set our hands and seals, the twenty-ninth day of August, anno Domini, one thousand seven hundred, and the twelfth year of the reign of our sovereign lord, King William the Third, over England, &c.

JOSEPH BELCHER, (and a seal.)
ABIGAIL BELCHER, (and a seal.)

Signed, sealed, and delivered in presence of us—
JOHN ADAMS,
ELEAZER MOODY, SEN.,
DANIEL OLIVER.

Received this day and year first within written, of the within named Eleazer Dorby, the sum of one hundred and seventy pounds, curr't money of New England, in full payment, satisfaction, and discharge of the purchase consideration within expressed.

Per JOSEPH BELCHER.

BOSTON, *August 29th*, 1700.

SUFFOLK, *ss.*

The within named Joseph Belcher and Abigail, his wife, personally appearing before me, the subscriber, one of his majesty's justices of the peace for the county aforesaid, acknowledged this instrument of bargain and sale to be their act and deed.

Per DUMER.

July 8, 1704.

Received, and accordingly entered and examined.

Per ADDINGTON DAVENPORT, *Reg'r.*

A true copy from Suffolk records of deeds, lib. 21, fo. 616.
Attest: HENRY ALLIENI, *Reg.*

9.—*Dorby's Division.*

[L. S.]

SUFFOLK, *ss.*

By the Honorable Josiah Willard, esquire, judge of probate, &c.

To Messrs. Stephen Bonleneau, Edward Gray, Jacob Sheafe, Colo. John Hill, and Thomas Foster, all of Boston, in the county of Suffolk, and sufficient freeholders, greeting:

Pursuant to the power and authority to me granted, in and by an act of general assembly of this province, I do hereby nominate and empower you (or any three of you) to make a just and equal division or partition of the estate in housing and land whereof Eleazer Dorby, late of Boston aforesaid, mariner, deceased, died

seized and possessed, to and among his three surviving children, Eleazer, Benjamin and Mehitable—that is to say, a double portion thereof to the said Eleazer, the oldest son, and the remainder thereof to the said Benjamin and Mehitable equally, pursuant to the dec'd last will, first setting off to his said son, Eleazer, the sum of one hundred and ninety-three pounds thirteen shillings and five pence, old tenor, being so much paid by him, as executor, more than the said deceased personal estate amounted to, according to your best skill and judgment, (to which you have been sworn before me;) and you are to make return thereon, with your doings therein, unto myself, at the register's office, as soon as may be.

Given under my hand and the seal of the said court of probate, at Boston, this eleventh day of September, anno Domini 1744.

J. WILLARD.

We, the subscribers, being appointed by the Hon. Josiah Willard, esq., judge of probate for the county of Suffolk, &c., to make a division or partition of the real estate of Eleazer Dorby, late of Boston, in the county of Suffolk, and province of the Massachusettes bay, in New England, mariner, deceased, whereof he died seized and possessed, to and among his three surviving children, namely, Eleazer, Benjamin and Mehitable—

In pursuance to said order we have viewed said land, and divided the same as follows, viz:

Impr's. We have set off to Eleazer Dorby, the eldest son of the deceased aforesaid, in consideration of one hundred and ninety-three pounds thirteen shillings and five pence, old tenor, being so much by him paid, as executor, more than the said deceased personal estate amounted to, as also for his double share, part or portion, in the said estate, the house and land, wharf and flats, and all the privileges and appurtenances thereto belonging, now in the possession of the widow Smith, as it is now butted and bounded, now called or named the Bull House and wharf; also one piece of land, bounded easterly on the highway thirty-eight feet; southerly by the land late the estate of Jonathan Simpson, deceased, one hundred and sixty-feet; and westerly by the land of the Rev. Mr. Samuel Chickley, twenty-five feet; and northerly by the land hereafter to be set off to Benjamin, the other son of said Dorby—as per the plan hereto annexed will plainly appear.

2dly. We set off to Benjamin Dorby, the other son of the said Eleazer Dorby, deceased, as his part or portion in said estate, the house and land now in the occupation or possession of his said brother, Eleazer Dorby, butted and bounded as follows: easterly by the aforesaid highway, thirty-four feet three inches; southerly by the aforesaid land set off to the said Eleazer Dorby; westerly by the aforesaid land of said Samuel Chickley, thirty-three feet six inches; northerly by the land to be set off to the said Mehitable,

as the plan thereof will fully show; also the southerly part of the land and wharf below the aforesaid highway, being butted westerly on said highway about fifty feet, more or less, with all the flats and privileges thereto belonging.

And whereas the housing, land and wharf, being by estimation valued at two hundred pounds, old tenor, more than is hereafter to be set off to Mehitable, daughter of Eleazer Dorby aforesaid, deceased, we order and appoint the said Benjamin Dorby to pay to his sister, Mehitabel Dorby, within one month from the date hereof, the sum of one hundred pounds in bills aforesaid.

3dly. We set off to Mehitabel Dorby, the daughter of the said Eleazer Dorby, deceased, as her part or portion of her said father's estate, the house and land now in the possession or occupation of said Benjamin Dorby, butted and bounded as follows: Easterly on the aforesaid highway twenty-eight feet two inches; southerly by the land set off to Benjamin Dorby aforesaid; westerly at the road partly by said Chickly and Col. John Hill's land, thirty-nine feet; and northerly by the land of Barthol'w Sears, one hundred twenty-seven feet—as per the plan hereunto annexed will more fully appear; which sum of one hundred pounds, old tenor, which she is to receive of her said brother, Benjamin, is in full of her share or portion in said estate.

In witness whereof we have hereunto set our hands and seals the sixth day of October, anno Domini 1744.

STEPHEN BARTINEAU, (and a seal.)
EDW. GRAY, (and a seal.)
JACOB SHEAFE, (and a seal.)
JOHN HILL, (and a seal.)
THOS. FOSTER, (and a seal.)

Signed, sealed and delivered in presence of us—
ESTIS HATCH,
JOHN OVERING.

SUFFOLK, *ss.*

By the Hon'ble Josiah Willard, esq., judge of probate, &c., the within written being presented to me by the subscribers as a division or partition of the real estate of Eleazer Dorby, deceased, I do allow and approve thereof accordingly.

J. WILLARD.

BOSTON, *Nov.* 1, 1744.

Examined.

Pr. A. BELCHER, *Reg'r.*

A true copy of record.
Attest: H. M. WILLIS, *Reg.*

10.—*Partition of Robbins.*

COMMONWEALTH OF MASSACHUSETTS,
Suffolk, ss.

To Thomas Dawes, esq., and Messrs. John Tileston, and
[L. S.] Richard Green, all of Boston, in the county of Suffolk, and all freeholders in the same county, greeting:

Whereas Jonathan Darby Robins, Mary Wallack, (wife of Moses Wallack,) and Ann Bradley, (wife of David W. Bradley,) all of Boston, in the county of Suffolk, did petition the supreme judicial court, held at Boston, within and for the county of Suffolk, on the second Tuesday of August last, showing that Mary Robbins, mother of the said Jonathan, Mary and Ann, was seized of the estate hereafter mentioned in fee, and died so seized thereof, at said Boston, in the year 1770, leaving her husband and their father, Robert Robbins, of said Boston, mariner, to hold the same as tenant by the courtesy; and also leaving said petitioners, together with their brother, Richard Robins, since deceased, the only heirs at law—the said Richard having died in or about the year 1780, in his minority, his part or share therein descended to his father, the said Robert Robins, who has lately deceased—by means of all which the said Jonathan Dorby Robins is now entitled to seven-fifteenth parts of said estate, and the said Mary Wallack and Ann Bradley to four-fifteenth parts each, the same estate being as follows, to wit, a certain tenement situate at Boston aforesaid, in Summer street, commonly called the Bull-house; also a certain wharf and flats, with stores thereon, commonly called Bull's wharf; also a certain piece of wharf land or flats near the same, measuring about fifty feet on Sea street; also a certain small tenement, with the land thereto belonging, now occupied by said Jonathan Dorby Robins, bounded easterly in front on said Sea street; also a certain other piece of land adjoining the late dwelling-house of said Robert Robins, bounding easterly in front on said Sea street. Also said petitioners, by their said petition further showing, that, as children and devisees named in the will of said Robert Robins, deceased, they are seized in fee of one undivided third part of and in the following real estate of which said Robert Robins died seized, to wit, a certain dwelling-house and land, lately occupied by s'd Robert, bounded easterly in front on said Sea street; also of a certain piece of wharf land and flats lying near thereto, bounded westerly on the same streett, here measuring about fifty feet—the last mentioned premises being subject to the widow's dower, as will appear by the records of the probate court. All which premises, those first mentioned and also those last mentioned, said petitioners are desirous should be divided by one common report and partition, and therefore prayed that partition might be made of the several aforedescribed estates, and that the shares of said petitioners might be

thirty nine feet; northerly on Thomas Clemens, one hundred and thirty-seven feet; southerly on land before set off to Mary Wallack, as the fences now stand; and also said two certain pieces of wharf and flats lying nearly before the same, the whole measuring in said Sea street, westerly one hundred feet; after the said Anne Bradlee shall have paid to Mary Wallack two hundred dollars, which assignment will be in full of her four-fifteenth parts of the above described estate, late of her mother, Mary Robins, and also in full of her one-third part of the above described estate, late belonging to her said father, Robert Robins, as will more fully appear by the warrant hereby annexed; all which is most humbly submitted.

It being further understood and declared, that the said dwelling-house set off to Mary Wallack is to possess the privilege of the drain to the afore mentioned flats, as it now is, she paying her proportion of the expenses that may arise for the repairs of the same.

THOMAS DAWES,
JOHN TILESTON,
RICHARD GREEN.

Boston, March 6th, 1802.

February Term, at Boston, A. D. 1802.

The proceedings of the committee on the partition of certain buildings, lands, wharfs, and flats in Boston, in the county of Suffolk, belonging to the persons mentioned in the annexed warrant, being returned, are read, seen, and understood; it is therefore considered by the court that the same be accepted and recorded as the law directs, and that the petitioners hereafter have and hold their said shares in severalty accordingly.

JN. TUCKER, *Clerk.*

We, the said Moses Wallack and Mary Wallack, do hereby acknowledge to have received of the said David W. Bradlee and Ann Bradlee, his wife, the said sum of two hundred dollars, ordered to be paid us by the said commissioners in the aforesaid division and partition. As witness our hands and seals, this twenty-sixth day of March, A. D. 1802.

MOSES WALLACK, [SEAL.]
MARY WALLACK. [SEAL.]

Signed, sealed, and delivered in presence of—
CHA'S CUSHING.

SUFFOLK, *ss.*

BOSTON, *March 26th*, 1802.

Then the above named Moses Wallack and Mary Wallack ac-

knowledged the above written rec't of said sum of two hundred dollars, by them signed, as their free act and deed.

Before me.

CHAS. CUSHING,
Just. of Peace.

Recorded in the clerk's office of the supreme judicial court at Boston. See book 10th, folio 125, for recording partitions and extents.

March 20th, 1802.

Attest:

CHAS. CUSHING, *Clerk.*

BOSTON, *March 26th*, 1802.

Received and entered with Suffolk deeds, lib. 200, folio, 203, &c.

Per WILLIAM ALLINE, *Reg'r.*

A true copy—Attest: CHAS. CUSHING, *Clerk.*

N. B. The original is delivered to Mr. Jonathan D. Robins, to his care and keeping.

C. CUSHING.

11.—*Robbins to J. French, and others.*

Know all men by these presents, that I, Jonathan Dorby Robins, of Boston, in the county of Suffolk and Commonwealth of Massachusetts, gentleman, in consideration of twenty-one thousand dollars to me paid by John French, Thomas N. French, and Thomas Richardson, all of said Boston, merchants, the receipt whereof is hereby acknowledged, do hereby give, grant, bargain, sell and convey, unto the said John, Thomas N., and Thomas, their heirs and assigns, a certain wharf and flats lying at the foot of Summer street, in said Boston, commonly called Bull's wharf, and bounded and described as follows, viz: westerly or northwesterly on Broad street, there measuring sixty-two feet and three inches, or thereabouts; northerly or northeasterly on land formerly belonging to Peleg Tolman, there measuring six hundred and fifty-three feet, more or less; easterly or southeasterly on low-water mark, there measuring fifty-two feet, or thereabouts; southerly or southeasterly on the town way or dock, there measuring six hundred and sixty feet, more or less, or however otherwise the same may be bounded and described, with all the right, title, and interest I may have in the soil at the upper end of said wharf, over which the said Broad street passes, subject to all the rights, easements, and privileges the said city of Boston may have therein; meaning to convey to the said grantees all my interest in the Bull wharf and flats, which was one of the estate set off to me in severalty by the division of my father's and mother's estates, dated March

6, 1802, and recorded with Suffolk deeds, lib. 200, fol. 203, subject to the rights, easements, and privileges which the said city of Boston may have therein: to have and to hold the above granted premises, with the privileges and appurtenances thereto belonging, to the said John, Thomas N., and Thomas, their heirs and assigns, to their use and behoof forever. And I, the said Jonathan D. Robins, for myself, and my heirs, executors and administrators, do covenant with the said John, Thomas N., and Thomas, their heirs and assigns, that I am lawfully seized in fee of the above granted premies; that they are free from all incumbrances, excepting what may have been done caused or occasioned by the said city of Boston; that I have good right to sell and convey the same to the said John, Thomas N., and Thomas as aforesaid; that I will, and my heirs, executors and administrators shall, warrant and defend the same to the said John, Thomas N., and Thomas, their heirs and assigns forever, against the lawful claims and demands of all persons.

In witness whereof I, the said Jonathan Dorby Robins, widower, have hereunto set my hand and seal, this twenty-ninth day of July, in the year of our Lord eighteen hundred and thirty-five.

J. D. ROBINS, [L. S.]

Signed, sealed and delivered in presence of us—
RICHARD ROBINS,
ELIZA C. ROBINS.

COMMONWEALTH OF MASSACHUSETTS,
Suffolk, ss.

July 30th, A. D. 1835.

Then personally appeared the above named Jonathan D. Robins, and acknowledged the foregoing instrument to be his free act and deed.

Before me. RICHARD ROBINS,
Justice of the Peace.

BOSTON, *July 30th*, 1835.

Rec'd and entered with Suffolk deeds, in lib. 394, folio 73.
By HENRY ALLINE, *Reg.*

RHODE ISLAND DISTRICT, *ss.*

CLERK'S OFFICE CIRCUIT COURT,
At Providence, Sept. 12th, 1853.

I, John T. Pitman, clerk of the said court for said district, do hereby certify that the above and foregoing two pages contain a true copy of the original deed filed of record in the case, Thomas Richardson vs. The City of Boston, disposed of at the June term, A. D. 1853. And I further certify that said original deed was

upon motion of the court delivered to the plaintiff in said case, this copy being left.

In testimony whereof I have hereunto set my hand and the seal of said circuit court, on the day and year above written.

[L. S.] JOHN T. PITMAN, *Clerk.*

12.—*J. French to Richardson.*

Know all men by these presents, that I, John French, of the city of Boston, merchant, in the Commonwealth of Massachusetts, in consideration of six thousand two hundred dollars to me paid by Thomas Richardson, of the city of Boston and State aforesaid, iron-founder, the receipt whereof is hereby acknowledged, do, by these presents, grant, remise, release, and forever quit-claim unto the said Richardson, his heirs and assigns, all my right, title, interest, and claim in and to a certain wharf, estate, and flats conveyed to me by Isaac P. Osgood, guardian, by deed bearing the date fifth day of June, anno Domini eighteen hundred and thirty-five, and recorded in Suffolk records, lib. 392, fol. 84, and described as follows: A certain lot of land situate on Sea street, in said Boston, and bounded as follows, to wit: northerly on the south side of Summer street and the town dock at the end thereof, extending from the corner of Summer and Sea streets, formed by the east side of Sea street and by the south side of Summer street, to the channel; then bounded on the north by Sea street, from the aforesaid corner to the land of David W. Bradley and Ann, his wife; then bounded southerly by said land of said Bradley and Ann, his wife, in her right, and extending from Sea street out to the channel; and then bounded easterly by the channel, or however otherwise the same is bounded. Also, all my right, title, interest, and claim in and to a certain other wharf and flats conveyed by deed of J. D. Robins, dated the 29th day of July, A. D. 1835, and recorded in Suffolk deeds, lib. 394, folio 73, and described as follows: A certain wharf and flats lying at the foot of Summer street, in said Boston, commonly called Bull's wharf, and bounded westerly or northwesterly on Broad street, there measuring sixty-two feet three inches, or thereabouts; northerly or northeasterly on land formerly belonging to Peleg Tolman, there measuring six hundred and fifty-three feet, more or less; easterly or southeasterly on low-water mark, there measuring fifty-two feet, or thereabouts; southerly or southwesterly on the town way or dock, there measuring six hundred and sixty feet, more or less, or however otherwise the same may be bounded and described, with all other right, interest, and easements in said deed: To have and to hold the above described premises to him, the said Richardson, his heirs and assigns, to his use and behoof forever; and I do covenant for myself, heirs, executors, and administrators, to and with said Richardson, his heirs and assigns, that I will, and

my heirs shall, warrant and defend the said premises unto the said Richardson, his heirs and assigns, against the lawful claims of all persons claiming by, through, or under me but not otherwise. And for the consideration aforesaid, and for divers other good and valuable considerations, do hereby release and quit-claim unto the said heirs and assigns all my right, claim, or possibility of dower in or out of the above described premises.

In witness whereof I, the said John French, have hereunto set my hand and seal, this eighth day of June, in the year of our Lord eighteen hundred and thirty-six.

JOHN FRENCH. [L. S.]

Signed, sealed, and delivered in presence of us—
W. STEVENSON,
ALBERT W. MUNROE.

NORFOLK, *ss.*

BOSTON, *June 15th, A. D.* 1836.

Then personally appeared the above named John French, and acknowledged the foregoing instrument to be his free act and deed. Before me.

WILLIAM STEVENSON,
Justice of the Peace.

BOSTON, *Octo. 27th*, 1836.

Received and entered with Suffolk deeds, lib. 411, folio 290.
By HENRY ALLINE, *Reg.*

RHODE ISLAND DISTRICT, *ss.*

CLERK'S OFFICE, CIRCUIT COURT,
At Providence, Sept. 12th, 1853.

I, John Pitman, clerk of said court for said district, do hereby certify that the above and foregoing two pages contain a true copy of the original deed filed of record in the case, Thomas Richardson vs. City of Boston, disposed of at the June term, A. D. 1853. And I further certify, that said original deed was, upon motion to the court, delivered to the plaintiff in said case, this copy being left.

In testimony whereof I have hereunto set my hand and the seal of said circuit court, on the day and year before written.

[L. S.] JOHN T. PITMAN, *Clerk.*

13.—*T. N. French to Alger.*

Know all men by these presents, that I, Thomas N. French, of the city of Boston, merchant, in consideration of twenty-six hundred dollars to me paid by Cyrus Alger, of said city, iron-founder, the receipt whereof is hereby acknowledged, do, by these presents, give, grant, bargain, sell, and convey unto the said Cyrus Alger,

his heirs and assigns, one undivided third part of a certain wharf and flats lying at the foot of Summer street, in said Boston, commonly called Bull's wharf, and bounded and described as follows, viz: westerly or northwesterly on Broad street, there measuring sixty-two feet three inches, or thereabouts; northerly or northeasterly on land formerly belonging to Peleg Tolman, there measuring six hundred and fifty-three feet, more or less; easterly or southeasterly on low-water mark, there measuring fifty-two feet, or thereabouts; southerly or southwesterly on the town way or dock, there measuring six hundred and sixty feet, more or less, as described in deed of J. D. Robins, recorded in Suffolk deeds, lib. 394, fol. 73, subject to all the right and lien of a certain mortgage on said estate made to said Jonathan D. Robins, as reference of the record will show: To have and to hold the above granted premises, with the privileges and appurtenances thereto belonging, to the said Cyrus Alger, heirs and assigns, to his and their use and behoof forever. And I, the said Thomas N. French, for myself, and my heirs, executors, and administrators, do covenant with the said Cyrus Alger, heirs and assigns, that I am lawfully seized in fee of the above granted premises; that they are free from all incumbrances, except said mortgage to said Jonathan D. Robins; that I have good right to sell and convey the same to the said Cyrus Alger as aforesaid; and that I will, and my heirs, executors, and administrators will, warrant and defend the same to the said Alger, his heirs and assigns forever, against the lawful claims and demands of all persons.

In witness whereof I, the said Thomas N. French, have hereunto set my hand and seal this twenty-seventh day of October, in the year of our Lord eighteen hundred and thirty-six.

THOMAS N. FRENCH, (and seal.)

Signed, sealed, and delivered in presence of—
TH. RICHARDSON.

COMMONWEALTH OF MASSACHUSETTS,
Suffolk, ss.

October 27*th*, *A. D.* 1836.

Then personally appeared the within named Thomas N. French, and acknowledged the foregoing instrument to be his free act and deed.

Before me.

HUGH MONTGOMERY,
Justice of the Peace.

October 28*th*, 1836.

At eight o'clock a. m. received, entered, and examined.
Pr. HENRY ALLINE, *Reg.*

A true copy from the records of deeds for the county of Suffolk, lib. 412, folio 42.

Attest: HENRY ALLINE, *Reg.*

14.—*Alger to Richardson—Quit-claim Deed.*

Know all men by these presents, that I, Cyrus Alger, of Boston, in the county of Suffolk and Commonwealth of Massachusetts, iron founder, in consideration of the sum of one dollar to me paid by Thomas Richardson, of said Boston, gentleman, the receipt whereof is hereby acknowledged, do hereby grant, remise, release, and forever quit-claim unto the said Thomas Richardson, his heirs and assigns forever, all my right, title, and interest, both at law and in equity, into and unto a certain wharf and flats lying at the foot of Summer street, in said Boston, commonly called Bull wharf, and bounded and described as follows, namely: westerly and northwesterly on Broad street, there measuring sixty-two feet and three inches, or thereabouts; northerly or northeasterly on land formerly belonging to Peleg Tolman, there measuring six hundred and fifty-three feet, more or less; easterly or southeasterly on low-water mark, there measuring fifty-two feet, or thereabouts; southerly or southwesterly on other land of said Thomas Richardson, there measuring six hundred and sixty feet, more or less, or however otherwise the same may be bounded and described, with all the right, title, and interest I may have in the soil at the upper end of said wharf, over which said Broad street passes. And for the consideration aforesaid I hereby grant, remise, release, and forever quit-claim unto the said Thomas Richardson, his heirs and assigns forever, all my right, title, and interest and estate, both at law and in equity—not only in, to, and unto the wharf and flats aforesaid, (as herein before granted,) but also in, to, and unto every and all extensions of said wharf and flats which heretofore have been or hereafter may be acquired under and by virtue of any act or acts, or grants or grant of the legislature of the commonwealth aforesaid, or otherwise, together with all rights of dockage, wharfage, ways, easements, rights, privileges, emoluments and appurtenances to said wharf and flats, and every and all extensions thereof, already made or hereafter to be made, appertaining and belonging: To have and to hold the above granted premises, with all the privileges and appurtenances to the same belonging, to the said Thomas Richardson, his heirs and assigns, to his and their use and behoof forever. And I, the said Cyrus Alger, for myself, and my heirs, executors, and administrators, do covenant with the said Thomas Richardson, his heirs and assigns, that the premises are free from all incumbrances made or suffered by me; and that I will, and my heirs, executors, and administrators shall, warrant and defend the same to the said Thomas Richardson, his heirs and assigns forever, against the lawful claims and

demands of all persons claiming by, through, or under me—but against none other.

In witness whereof we, the said Cyrus Alger and Mary Otis, wife of said Cyrus, in token of her release of all right and title of or to dower in the granted premises, have hereunto set our hands and seals, this tenth day of February, in the year of our Lord eighteen hundred and forty-eight.

CYRUS ALGER, [L. S.]
MARY OTIS ALGER. [L. S.]

Signed, sealed, and delivered in the presence of—(the word "wharf" being first interlined, and the word "equity" being first erased, on first page.)

H. MONTGOMERY,
SAM'L B. DEAN.

COMMONWEALTH OF MASSACHUSETTS,
Suffolk, ss.

Feb'y 16*th*, 1848.

Then personally appeared the within named Cyrus Alger, and acknowledged the within instrument to be his free act and deed.

Before me.

H. MONTGOMERY,
Justice of the Peace.

BOSTON, *March* 31*st*, 1851.

Received and entered with Suffolk deeds, lib. 618, folio 219.

Pr. HENRY ALLINE, *Reg.*

15.—*Baxter's Possession.*

Extract from the book of possessions, in the town of Boston. Nicholas Baxter, his possessions within the limits of Boston:

One house and lott, bounded with the street or lane north, and west Edward Brown; the bay east; Mathew Lyons southward.

A true copy.

Attest: S. F. McCLEARY,
City Clerk.

Edward Brown, his possession in Boston:

One house and garden, bounded with Nicholas Baxter, northerly and westerly; the bay easterly; and Mathew Lyon southwards.

A true copy.

Attest: S. F. McCLEARY, *City Clerk.*

16.—*Baxter to Bull.*

To all christian people to whom this present writing shall come—Nicholas Baxter, of Boston, in the Massachusetts colony of New England, mariner, sends greeting:

Know ye, that I, the said Nicholas Baxter, for the natural love

and affection which I bear towards John Bull, of said Boston, ffelt maker, and Mary, his wife, the daughter of my wife Margarett, and their children, and for their better advancement and preferment, as for divers other good causes and considerations me, the said Nicholas Baxter, thereunto especially moving, have voluntarily and freely given, granted, enfeoffed and confirmed, and by these presents do give, grant, enfeoff and confirm unto the said John Bull, his heirs and assigns, a parcel of land lying and being in Boston aforesaid, and bounded with the sea east and by south, and is there eighty-one foot, or thereabout; with the land of Thomas Sheffell, west and by south, and is there eighty-six foot, or thereabout; with the land of Mary Buttolph northwest, and is there eighty-one foot, or thereabout; and with the highway east and by north, and is there seventy-five foot, or thereabout: To have, hold, possess, and enjoy the afore granted premises, and all and every part thereof, with their appurtenances, privileges, and commodities thereof and thereunto belonging, unto the said John Bull, his heirs and assigns, to the only proper use and behoof of the said John Bull, his heirs and assigns forever, in such large and ample sort, manner, and form as I, the said Nicholas Baxter, may grant, convey, and assure the same; and I, the said Nicholas Baxter, do hereby covenant and grant for me and my heirs, that the afore granted premises, with all and every the appurtenances and privileges thereof as aforesaid, unto the said John Bull, his heirs and assigns, against me and my heirs, I shall and will warrant and forever defend by these presents.

In witness whereof I, the said Nicholas Baxter, have hereunto put my hand and seal, the twelfth day of December, in the year of our Lord one thousand six hundred sixty and eight, annoy regni regis caroli secundi XXI.

NICHOLAS BAXTER, (and a seal appended.)

(*Endorsed:*)

This within written was signed, sealed and delivered, and the word "have" interlined before sealing, and the said Bull long since in possession.

THEODORE ATKINSON,
JOHN ATKINSON, *Ita.*

Attest: Pr. ROBERT HOWARD,
Not. Publ.

Be it known unto all men, that I, Margaret, the wife of the within named Nicholas Baxter, do, by these presents, resign up all my right of thirds in the within specified land given by my said husband unto my son-in-law, John Bull.

In witness whereof I have subscribed my name, the day and year within written.

The marke of MARGARETT B. BAXTER.
Test: ROBERT HOWARD,
Not. Publ.

Nicholas Baxter and Margarett, his wife, acknowledged this instrument of writing to be their act and deed, the 12th of December, 1668, before

JOHN LEVERETT,
Assistant.

Recorded and compared, February 14, 1672.
Pr. ISAAC ADDINGTON,
Recorder.

A true copy from the records of deeds for the county of Suffolk, lib. 8, folio 66.
Attest: HENRY ALLINE, *Reg.*

17.—*Bull's Liberty to Wharf.*

May 25, 1674.—John Bull—Liberty to Wharf.

John Bull hath liberty to wharf before his own lands in proportion with his neighbors.

A true copy of the records of the town of Boston.
Attest: S. F. McCLEARY,
City Clerk.

18.—*Dorby and others to Jonathan Bull.*

To all people unto whom the present shall come, Eleazer Dorby, mariner, and Mary his wife, John Jones, shipwright, and Margaret his wife, Samuel Greenleaf, victualer, and Martha his wife, and Michael Martin, mariner, and Mehitabel his wife, all of Boston, in the county of Suffolk, in New England, (which said Mary, Margaret, and Martha are daughters, and the said Mehitabel is grand-daughter of John Bull,) late of said Boston, felt maker, deceased, send greeting:

Know ye, that for and in consideration that we have received of Jonathan Bull, of said Boston, mariner, and administrator to the estate of said John Bull, our respective parts and proportions of the surplusage and clear personal estate of the said John Bull, and also in consideration that he hath paid thirty-two pounds fourteen shillings and nine-pence to each of us, in full satisfaction for our share of and in the real estate of the said John Bull, we, the said Eleazer and Mary Dorby, John and Margaret Jones, Samuel and Martha Greenleaf, Michael and Mehitable Martin, have given, granted, bargained, sold, remised, released and quit-claimed, and by these present do give, grant, bargain, sell, remise, release, quit-claim and con-

firm unto the said Jonathan Bull, his heirs, executors, administrators and assigns forever, all our and each of our right, estate, title, interest, property, claim and demand whatsoever, which we now have, or at any time to come can pretend to have or claim, of and in all that certain dwelling-house and land in Boston aforesaid, wherein the said John Bull lately dwelt, at the southeasterly part of the said town, commonly known by the name of the Bull, with the land and beach and flats thereto belonging, and also of and in all other real estate in Boston aforesaid whereof the said John Bull died seized, and likewise all his personal estate wheresoever, lying or found: To have and to hold the said given, granted, sold and released dwelling-house, lands, real and personal estate, whereof the said John Bull died seized and possessed, situate in Boston aforesaid, unto him, the said Jonaethan Bull, (in his peaceable possession now being,) his heirs, executors, administrators and assigns forever, to his and their own sole and proper use, benefit, and behoof forevermore, and that of and from all right, estate, title, interest, reclaim, challenge or demand whatsoever, to be by us, the said Eleazer and Mary Dorby, John and Margaret Jones, Samuel and Martha Greenleaf, Michael and Mehitable Martin, or either of us, our heirs, executors or administrators respectively, had, made, pretended or claimed, of, in, or the said given, granted, and released real and personal estate of the said John Bull, we, and each of and every of us and them, shall be utterly debarred and forever excluded of and from the same, by force and virtue of these presents.

In witness whereof we have hereunto put our hands and seals, the third day of April, anno Dom. one thousand seven hundred twenty-four.

ELEAZER DORBY, and a seal.
MARY DORBY, and a seal.
JOHN JONES, and a seal.
MARGARET J. JONES,
Her ✕ mark, and a seal.
MICHAEL MARTIN, and a seal.
MEHITABLE MARTIN, and a seal.
SAMUEL GREENLEAF, and a seal.

Signed, sealed and delivered in presence of us—
THOMAS BROWN,
EBEN BELCHER,
RICHARD HOOD.

Signed, sealed and delivered in presence of us, by—
MICHAEL MARTIN,
MARY JONES,
ANNA THOMPSON.

SUFFOLK, *ss.*

BOSTON, *April* 6, 1724.

Eleazer Dorby and Mary his wife, John Jones and Margaret his wife, Samuel Greenleaf and Martha his wife, and Mehitabel Martin, acknowledged this instrument to be their free act and deed.

Before me.

TIMOTHY CLARK,
Just. Peace.

SUFFOLK, *ss.*

BOSTON, *Dec. 25th*, 1724.

Then Michael Martin personally appeared, and did acknowledge the above and foregoing instrument to be their free act and deed.

Before me.

TIMOTHY CLARK,
Just. Peace.

Jan'ry 19, 1724.

Received, and accordingly entered and examined.

Pr. JOHN BALLENTINE, *Reg.*

A true copy from the records of deeds for Suffolk county, lib. 38, fol. 99.

Attest: HENRY ALLINE, *Reg.*

19.—*Certificate of Marriage of Elizabeth Price.*

COMMONWEALTH OF MASSACHUSETTS,
CITY OF BOSTON, *March*, 1851.

I, the subscriber, do hereby certify, that it appears by the register of marriages of said Boston, that the Rev. Roger Price and Elizabeth Bull were married by the Rev. Timothy Cutler, D. D., on the fourteenth day of April, in the year of our Lord one thousand seven hundred and thirty-five. The record is in the words and figures following, viz:

"The Rev. Roger Price and Elizabeth Bull married by the Rev. Timothy Cutler, D. D., 14th April, 1735."

ARTEMAS SIMONDS,
City Registrar.

I, Artemas Simonds, above named, depose and say, that I hold the office of city registrar of the city of Boston, in the county of Suffolk and Commonwealth of Massachusetts; that I am the keeper of the registry of births, marriages, and deaths in said city, and that the above is a true extract from the records of marriages in said city, with the exception above named, as certified by me.

ARTEMAS SIMONDS.

SUFFOLK, *ss.*

BOSTON.

The above named appeared and made oath to the truth of the above certificates by him subscribed.

Before me.

Justice of the Peace.

20.—*Elizabeth Price to L. Valentine.*

Know all men by these presents, that I, Elizabeth Price, of Hopkinton, in the county of Middlesex, single woman, in consideration of the covenants and engagements of Lawson Valentine, of Cambridge, in said county, trader, of even date herewith, have remised, released and forever quit-claimed, and do, for myself and my heirs, remise, release and forever quit-claim unto the said Lawson Valentine, and his heirs and assigns, all the lands and tenements which I have or hold or have right to hold and possess in Hopkinton aforesaid, with all the privileges and appurtenances to the same belonging, notwithstanding the same are not particularly described by metes and bounds; and for the consideration aforesaid I do, by these presents, remise, release and forever quit-claim unto the same Lawson Valentine, his heirs and assigns, all the lands and tenements which I have and hold or to which I am in any way entitled, situate in Boston, in the county of Suffolk, will all the privileges and appurtenances to the same belonging, notwithstanding the said lands are not particularly described by metes and bounds: To have and to hold the afore described premises to the said Lawson Valentine and his heirs and assigns forever, so that neither I nor any person claiming by, through, or under me, shall have claim or title thereto: Provided, nevertheless, that if the said LawsonValentine, his heirs, executors and administrators, shall not well, truly, and faithfully perform and keep the covenants and engagements all and singular contained in the obligation of the said Lawson Valentine to me, the said Elizabeth Price, of even date herewith, then this deed shall be forthwith null and void.

In testimony whereof I have hereunto set my hand and seal, this first day of July, in the year of our Lord eighteen hundred and twenty.

ELIZABETH PRICE, and a seal.

Signed, sealed, and delivered in presence of us—
ELISHA FAIRBANKS,
FRANCIS A. EWING.

MIDDLESEX, *ss*.

July 3*d*, 1820.

Then the said Elizabeth Price personally appeared before me, and acknowledged this instrument to be her free act and deed.

Before me—

ELISHA FAIRBANKS,
Justice of the Peace.

August 16*th*, 1820.

Received, entered, and examined.

Per WILLIAM ALLINE, *Reg.*

A true copy from the records of deeds for the county of Suffolk, lib. 268, fol. 232.

Attest: HENRY ALLINE, *Reg.*

21.—*Andrew Price to L. Valentine.*

Know all men by these presents, that I, Andrew Price, clerk, rector of Britwell, Salome, Oxfordshire, in the kingdom of Great Britain, in consideration of forty-five hundred dollars to me paid by Lawson Valentine, of Cambridge, in the State of Massachusetts, one of the United States of America, merchant, the receipt whereof I do hereby acknowledge, have sold, transferred, and conveyed, and by these presents do sell, transfer, and convey to the said Lawson Valentine, all my right, title, and interest in all those certain real estates at the bottom of Summer street, in Boston, in the county of Suffolk and State of Massachusetts aforesaid, described as follows, viz: Beginning on Sea street, at the southeasterly corner of land of one Clements, now occupied by one Vose; thence running as the fence now stands, on Sea street, in a straight line seventy-one feet; then turning and running northeasterly fifteen feet; and then northwesterly on Summer street, as the fence and front of a shop now stands, sixty-six feet, to land owned or occupied by William P. Whitney; then southerly by the land of said William P. Whitney eighty-one feet three inches, to the aforesaid land of said Clements; then by said land of said Clements, ninety feet ten inches, to the point of beginning, with all the rights and privileges to the same pertaining. Also one other lot on the opposite side of said Sea street, bounded northerly on the south side of Summer street, and the town dock at the end thereof, extending from the corner of Summer street and Sea street, formed by the east side of Sea street and by the south side of Summer street, to the channel; then bounded on the north by Sea street, from the aforesaid corner, to the land of David W. Bradlee and Ann, his wife; then bounded southerly by s'd land of David W. Bradlee and Ann, his wife, in her right, and extending from Sea street out to the channel; and then bounded easterly by the said channel, with all rights and privileges and appurtenances unto the same in anywise

appertaining: To have and to hold the same to him, the said Lawson Valentine, his heirs and assigns forever. And I do hereby covenant with the said Valentine that I have good right to sell and convey the premises in manner as aforesaid, and that I will warrant and defend the same against all persons who may lawfully claim and hold the same by, through, or under me, in any manner whatsoever.

In testimony whereof I, the said Andrew Price, by George Sullivan, my attorney, have hereunto set my hand and seal, this twentieth day of July, A. D. eighteen hundred and twenty-one.

ANDREW PRICE, [L. S.]
By his Attorney, GEORGE SULLIVAN.

Signed, sealed, and delivered in presence of—
CHARLES P. CURTIS,
GEORGE R. SULLIVAN.

SUFFOLK, *ss.*

July 23*d*, 1821.

Then personally appeared the above named George Sullivan before me, and acknowledged the above instrument to be the voluntary act and deed of the above described Andrew Price.

CHARLES P. CURTIS
Justice of the Peace.

BOSTON, *July* 25*th*, 1821.

Received and entered with Suffolk deeds, lib. 272, folio 209.
Per HENRY ALLINE, *Reg.*

RHODE ISLAND DISTRICT, *ss.*

CLERK'S OFFICE CIRCUIT COURT,
At Providence, September 12*th*, 1853.

I, John T. Pitman, clerk of said court for said district, do hereby certify that the above and foregoing two pages contain true copy of the original deed filed of record in the case, Thomas Richardson vs. City of Boston, disposed of at the June term, A. D. 1853. And I further certify that said original deed was, upon motion to the court, delivered to the plaintiff in said case, this copy being left.

In testimony whereof I have hereunto set my hand and the seal of said court, on the day and year above written.

JOHN T. PITMAN, *Clerk.*

22. *Osgood, Guardian to John French.*

Know all men by these presents, whereas Isaac P. Osgood, guardian of Andrew P. Valentine, William P. Valentine, Edward L. Valentine, and Francis E. Valentine, minor children and heirs of Lawson Valentine, late of Boston, in the county of Suffolk, merchant, deceased, intestate, by an order of the court of probate,

begun and held at Boston, within the county of Suffolk and Commonwealth of Massachusetts, on the twenty-seventh day of April last past, was licensed and empowered to sell and pass deeds to convey all the right, title, and interest of said minor children in and to the real estate of the said Lawson Valentine, at the time of his decease, hereinafter described; and whereas he, the said I. P. Osgood, guardian as aforesaid, having given thirty days' public notice of the intended sale, by printing a notification of the time and place of sale three weeks successively in the newspaper called the Daily Columbia Centinel, printed at Boston, and by posting said notification in said Boston, and in Charleston, and in Cambridge, in the county of Middlesex, thirty days before the sale, and having first taken the oath by law in such cases required, did, on the fourth day of June, A. D. 1835, pursuant to the license and notice aforesaid, sell by public auction to John French, of Boston aforesaid, merchant, the real estate of the said minor children hereinafter described, to him for the sum of thirteen thousand twenty-five dollars, said sum being the highest bid at said sale, he being the highest bidder therefor.

Now, therefore, know ye, that I, the said I. P. Osgood, guardian as aforesaid, by virtue of the power and authority in me vested as aforesaid, and in consideration of the aforesaid sum of thirteen thousand twenty-five dollars paid by the said John French, the receipt whereof I do hereby acknowledge, do hereby give, grant, sell, and convey unto him, the said John French, the right, title, and interest of said minor children in a certain lot of land, situate on Sea street, in said Boston, bounded as follows, to wit: northerly on the south side of Summer street, and the town dock at the end thereof, extending from the corner of Summer and Sea streets, formed by the east side of Sea street and by the south side of Summer st., to the channel; then bounded on the north by Sea street, from the aforesaid corner to land of David W. Bradlee and Ann, his wife; then bounded southerly by said land of said David W. Bradlee and Ann, his wife, in her right, and extending from Sea street out to the channel; and then bounded easterly by the said channel, and however otherwise the same is bounded. Also the right of dower in the aforesaid lot of land of Mary Ann Valentine, widow of said Lawson Valentine, released to me by deed of even date of these presents, meaning hereby to convey all the right, title, and interest which said Lawson Valentine acquired by the deeds of Andrew Price and Elizabeth Price to him of the same lot of land:

To have and to hold the afore granted premises, with all the privileges and appurtenances to the same belonging, to him, the said John French, his heirs and assigns, to his and their use and behoof forever.

And I, the said I. P. Osgood, guardian as aforesaid, for myself

and for my heirs, executors, and administrators, do hereby covenant with the said John French, his heirs and assigns, that in pursuance of the license aforesaid I gave thirty days' public notice of the said intended sale, by posting and printing the same as aforesaid, and that I took the oath by law required previous to said sale.

In witness whereof I, the said I. P. Osgood, guardian as aforesaid, have hereunto set my hand and seal, this fifth day of June, in the year of our Lord one thousand eight hundred and thirty-five.

[L. S.] ISAAC P. OSGOOD,
Guardian of the Heirs of L. Valentine.

Signed, sealed, and delivered in presence of—
EDWARD BLAKE.

SUFFOLK, *ss.*

June 10*th*, 1835.

Personally appeared the above named I. P. Osgood, acknowledged this instrument to be his free act and deed, before me.
EDWARD BLAKE,
Justice of the Peace.

BOSTON, *June* 15*th*, 1855.

Received and entered with Suffolk deeds, lib. 392, fol. 84.
By HENRY ALLINE, *Reg.*

RHODE ISLAND DISTRICT, *ss.*

CLERK'S OFFICE, CIRCUIT COURT,
At Providence, Sept. 12*th*, 1853.

I, John *P.* Pitman, clerk of said court for said district, do hereby certify, that the above and foregoing three pages contain a true copy of the original deed filed of record in the case, Thomas Richardson vs. The City of Boston, disposed of at the June term, A. D. 1853; and I further certify, that said original deed was, upon motion to the court, delivered to the pl'ff in said case, this copy being left.

In testimony whereof I have hereunto set my hand and the seal of said court, on the day and year above written.

[L. S.] JOHN *P.* PITMAN, *Clerk.*

23.—*Town Record as to Summer Street*—1708.

ANNO 1708, *May* 3*d.*

The street leading easterly from Doctor Okes, his corner in Newbury street, passing by the dwelling-house of Capt. Timothy Clark, extending to ye sea, Summer street.

A true copy from records of town of Boston.
Attest: S. F. McCLEARY,
City Clerk.

ANNO 1708, *May ye 3d.*

The way from the lower end of Summer street, leading north-easterly, by the sea side, with the return up to the rope-walk, Flounder lane.

A true copy from the records of the town of Boston.
Attest: S. F. McCLEARY,
City Clerk.

24.—*Town Record as to Summer Street*—1740.

ANNO 1740, *June* 30.

On Friday last, the 27th of June current, the selectmen met at Bull's wharf, the lower end of Summer street, upon the desire of Mrs. Dyer, and run the line between the town and said Dyre, and staked out the highway, taking the measure from the mill, on the north side of the said highway, which is agreeable to the record thereof, made in the year sixteen eighty-three.

A true copy.
Attest: S. F. McCLEARY,
City Clerk.

25.—*Richardson's Grant from the Legislature.*

COMMONWEALTH OF MASSACHUSETTS.

In the year one thousand eight hundred and forty-five.—An act to authorize Thomas Richardson to extend his wharf.

Be it enacted by the Senate and House of Representatives in general assembly assembled, and by the authority of the same, as follows:

Thomas Richardson, proprietor of a certain wharf, called Bull's wharf, situated on Broad street, near the end of Summer street, in the city of Boston, is hereby authorized to extend and maintain his said wharf to the harbor channel, as far as the line established by the act entitled "An act to preserve the harbor of Boston, and to prevent encroachments thereon," passed the nineteenth of April, in the year one thousand eight hundred and thirty-seven, and shall have the right to lay vessels at the sides and end of said wharf, and to receive dockage and wharfage therefor; provided that so much of said wharf as shall be erected under this act shall be built on piles, and that this act shall in nowise affect the legal rights of any corporations or persons whatsoever.

House of Representatives, February 26th, 1845.
SAMUEL H. WALLY, Jr., *Speaker.*

Passed to be enacted in Senate, Feb'y 27th, 1845.

Passed to be enacted.

LEVI LINCOLN, *President.*

Feb. 27th, 1845. Approved.

GEORGE N. BRIGGS.

Feb. 28th, 1845. A true copy.
Attest:

JOHN G. PALFREY,
Secretary of the Commonwealth.

26.—*Order of Mayor and Aldermen. July* 3, 1849.

City of Boston, in Board of Mayor and Alderman, Tuesday, July 3d, 1849.

Whereas there are two indictments pending against the city of Boston for a public nuisance on the flats at the foot of Summer street in said city, which nuisance is said to be caused mainly by an ancient sewer, which has its outlet upon the said flats, and whereas great complaints have been made to this board of said nuisance by divers citizens, and whereas due notice has been given to Thomas Richardson, and all persons interested, to appear and show cause, if any they have, why the said flats should not be filled up and the said sewer extended to low-water mark, and such other means be taken in the premises as should effectually prevent the said nuisance for the future, and at the meeting of this board, on the twenty-fifth ultimo, the said Richardson did appear, and was heard in his own behalf; and whereas this board have personally viewed the premises, and are satisfied that they are in a state of nuisance and are dangerous to the public health, and that the only effectual method of removing the said nuisance and effectually preventing the same in future is by extending the said drain—

Therefore ordered, that the common sewer at the foot of Summer street be extended five hundred feet over the land or flats belonging to the city, in the direction of the channel, under the direction of the superintendent of sewers and drains.

A true copy.
Attest:

S. F. McCLEARY,
City Clerk.

27.—*Order of Mayor and Aldermen. July* 30*th,* 1849.

CITY OF BOSTON, *Monday, July* 30*th,* 1849.

In Board of Mayor and Aldermen.

Ordered, that due notice be given to Thomas Richardson and all others interested to remove an obstruction in Summer street, near where the common sewer enters the dock, within ten days; and in default thereof that the city marshal be instructed to remove the same.

SUFFOLK, *ss.*

CITY OF BOSTON, *July 30th*, 1849.

I have this day notified the within named Thomas Richardson, by leaving him an attested copy of this notice at his last and usual place of abode; and on the thirty-first day of the same July, I notified William B. Perkins and Calvin Bullard, by delivering to each of them in hand an attested copy of this notice; and on the same day I notified Matthew Hays, by leaving him an attested copy of this notice at his last and usual place of abode.

WILLIAM MUNROE,
Constable.

Fees.

Three services	90
Three travels	12
One service and travel	34
	1 36

A true copy.
Attest:

S. F. McCLEARY,
City Clerk.

28.—*Order of Mayor and Aldermen. Aug. 21st*, 1849.

City of Boston, in Board of Mayor and Aldermen, August 21st, A. D. 1849.

Whereas by an order of this board, passed on the third day of July last past, it was ordered that the common sewer at the foot of Summer street be extended five hundred feet over the land or flats belonging to the city in the direction of the channel, under the direction of the superintendent of sewers and drains, and whereas certain obstructions have been placed in that part of Summer street, as anciently described and laid out, lying between Broad street and the sea, which obstructions ought to be removed, to the end that the said drain may be properly laid, and that free access to the same may be had over a public way; and whereas, in the opinion of this board, after personal inspection of the premises, and examination and due notice to all parties interested, the said way ought to be kept open from Broad street to the sea; and whereas by an order of this board, passed on July thirtieth, now last past, it was ordered that due notice be given to Thomas Richardson and all others interested to remove all obstructions in Summer street near where the common sewer enters the dock within ten days, and in default thereof that the city marshal be instructed to remove the same; and whereas it appears that due notice of the said order was given according to the terms thereof: now, therefore,

be it ordered that the city marshal cause the said obstruction to be removed forthwith.

A true copy.

Attest: S. F. McCLEARY,
City Clerk.

29.—*Extract from Town Records, 26th 2d month,* 1652.

1652, *26th of 2d month.*

At a meeting of the selectmen, &c.—There is granted to John Anderson libertie to wharf before the highway adjoining to his land *one* the one side and the land of John Crabtree on the other side, and that libertie granted unto him for to take wharfing of strangers for goods or wood shall be landed by them *one* the said wharf; but he hath no libertie to take wharfing of any inhabitants of this town for either goods or wood landed on that part of the wharf before the highway, provided it be not there above twenty-four houses, if it be seasonable notice for to get it away, or be not the Lord's day.

A true copy from the records of the selectmen of the town of Boston.

Attest:

SAM'L F. McCLEARY,
City Clerk.

City of Boston, in board of Mayor and Aldermen, July 23, 1838.

Ordered, that the city solicitor be requested to examine the title of the city to the flats at the bottom of Summer street, with a view of ascertaining whether any person has trespassed upon the same.

BOSTON, *Sept.* 6, 1858.

I certify that the foregoing is a true copy from the records of the mayor and aldermen for the year 1838.

SAM'L F. McCLEARY,
City Clerk.

Dec. 24, 1838.

Ordered, that the city marshal be directed, on behalf of the city, to take possession of a piece of land lying easterly of Broad street, and extending towards low-water mark, bounded on the north by Robbin's, late Gridley's or Gill's wharf, and on the south by a straight line thirty feet distant therefrom, the said piece of land being part of Summer street, and that the marshal cause all obstructions to be removed from the premises, and cause a fence to be erected on the north and south sides of the same, under the direction of the committee on laying out and widening streets.

BOSTON, *Sept.* 6, 1858.

I certify that the foregoing is a true copy from the records of the mayor and aldermen of the city of Boston. Vol. XVI, page 420.

SAM'L F. McCLEARY,
City Clerk.

And further to maintain to maintain the issue on his part, the plaintiff offered to put in evidence the documents following, viz:

30.—*Extract from Town Records*, 17*th* 8*th mo.*, 1636.

17*th day of the* 8*th month*, 1636.

At a meeting this day, before Thomas Oliver, Thomas Leverett, Wm. Hutchinson, Robert Hayne, John Newgate, William Colburn, John Coggerhall, Wm. Brenton and John Sampford, it is ordered that John Gallop shall remove his puyles at his yard end within 14 days, and to rainge them even with the corner of his house, for the preserving of the way upon the sea banke.

Also, that there shall be a street way between Henry Lynn and Mr. Samuel Cole's ground, to run up from the water-side to the next great crosse street, 1 rod and a half broad.

Also another lane to get up from the water-side by John Gallop, a pole breadth, unto the same crosse-way.

Also another lane to be left to goe from the water-side upon the banke, or near that goes up from the end of John Mylane's house, next Wm. Aspinwall's ground, and to goe along to the Mylne cove, a rod and a half broad.

A true copy from the records of the selectmen of Boston.

Attest:

SAM'L F. McCLEARY,
City Clerk.

31.—*Extract from Town Records, May* 3*d*, 1708.

1708, *May* 3*d.*

At a meeting of the selectmen, &c.—

Ordered, that the streets, lanes, and alleys of this town, as they are now bounded and named, be recorded in the town book E, which are as followeth, namely:

81 Cross street. The way leading from the mill pond southeasterly by the late Deacon Phillips' stone house, extending down to the sea.

83 Wood lane. The lane by the house of the late Capt. Timothy Prout, deceased, leading from Middle street to First street, and so down to ye sea.

89 Fleet street. The street leading from William's corner, nigh Mr. Jones Clark, southwesterly down to the sea by Scarlett's wharfe.

A true extract from the records of the selectmen of the town of Boston.

Attest:

S. F. McCLEARY,
City Clerk.

32.—*Extract from Town Records, Aug.* 30, 1709.

Vote of Selectmen.—Township—1709.

BOSTON, *ss.*

At a meeting of the selectmen, August 30th 1709.—

The selectmen, having viewed and considered the way or slip at the lower end of Flett street, ordered that the same be preserved and continued twenty-one foot in breadth, between the housing of Mr. Josiah Wilcott on the north and the land or property of C. Habijah Savage on the south, and that the same breadth be continued down to low-water mark.

A true copy from the records of the selectmen of the town of Boston.

Attest:

SAM'L F. McCLEARY,
City Clerk.

But the court rejected the same as not pertinent to the issue, and the plaintiff excepted to the ruling.

And further to maintain the issue on his part, the plaintiff offered the following oral evidence.

Deposition of Joseph Jones.

I, Joseph Jones, of Boston, in the district of Massachusetts, gentleman, being duly sworn on oath, depose and say, in answer to interrogations proposed by P. W. Chandler, esquire, attorney for the city of Boston, as follows:

1 question. What is your age; how long have you resided in Boston; what has been your occupation?

Answer. I was eighty-three years in March last; I was born in Halifax, and came from there in my infancy, and have lived here ever since, except when at sea; I served my time as a sail maker, with Mr. Joseph Balch, who lived in Summer street.

2 question. Do you know the dock at the foot of Summer street, between the Bull wharf and the Valentine wharfs; if yes, how long have you known it? State your means of knowledge.

Answer. I know the said dock; I have known it ever since I was an apprentice, more than sixty years; Mr. Balch lived—my master lived—in the same street.

3 question. State whether or not there was formerly a building on the Valentine wharf, and also on the Bull wharf; if yea, describe them.

Answer. There were formerly a building on the Bull wharf. It was a house called the Bull house, a large wooden building, where an old lady by the name of Stevens kept a kind of shop; it was on the north side of the dock. There was a place built on the Valentine wharf to land ballast on, and also the grading ways beyond that.

4 question. How long ago was this the state of things?

Answer. It is sixty or seventy years.

5 question. How far down towards the sea did the Bull wharf extend?

Answer. Clear down to low-water mark; old Capt. Robbins had a brig which he used to bring up there into the dock, on the south side.

6 question. Has not the Bull wharf been extended within a few years?

Answer. I think it has.

7 question. How many feet was the end of the Bull wharf before its extension from the present line of Broad street; about how long was the wharfs?

Answer. It was down to low-water mark, but I can't tell how many feet; the wharf was not very long; I don't know exactly the feet; it was a short wharf.

8 question. Was it more or less than forty feet?

Answer. I should not think it was more than forty feet.

9 question. How long was the wharf on the south side?

Answer. It was a short wharf; I cannot tell the exact number of feet; it was built occasionally to land ballast, and beyond that was the crossing way.

10 question. How would it compare in length with the Bull wharf?

Answer. It was not quite so long as the Bull wharf.

11 question. Were not the flats bare at the end of these wharves at low water?

Answer. Occasionally bare when the tide was down—just as they are now.

12 question. How often were they bare at low water?

Answer. As often as they are now.

13 question. What was the condition of that dock when you first remember it; whether open or not; was there a drain opening into it from Summer street?

Answer. Just as the docks are now, when fishing boats come in and out; the dock was open; there used to be a fish market there; I have bought many a fish therefor my master. There was a drain opening into the dock from Summer street.

14 question. Did the fish boats come up to the head of the dock next to Summer street, and sell fish there?

Answer. Yes, sir.

15 question. Was there a small bulk head on the dock on Summer street; if yes, were you in the habit of buying fish from the fish boats there?

Answer. There was—built on purpose to land ballast, and those kind of things; I was in the habit of buying fish from the fish boats there.

16 question. Whether or not you know of a fish stand being placed there by permission of the selectmen?

Answer. Yes, sir; by what was called the town of Boston then.

Objected to by Mr. Bartlett.

17 question. State whether or not the town of Boston exercised control over this dock; if not, who did?

Answer. Yes, sir.

Objected to by Mr. Bartlett.

18 question. How do you know the town exercised control over the dock; what was done?

Answer. I presume they did; I can't tell no other way; they did nothing; it used to be a fish market then, and boats used to come in and go out with their fish to land at the fish market there.

19 question. State whether or not the dock was regarded by you and the public as a public dock?

Answer. It was.

Objected to by Mr. Bartlett.

20 question. Did you ever hear or know of any persons exercising control over or claiming it as private property?

Answer. No, sir; never.

21 question. How long have you thus known this dock to to be used?

Answer. All my lifetime, you may say. I have been confined to the house now about two years; up to that time I had been engaged in business as a sail maker.

22 question. State whether or not you have been acquainted with the dock up to the time when you were taken sick?

Answer. Yes, sir.

23 question. How frequently have you seen it?

Answer. Perhaps not very often, because I was about my business. Sometimes I used to take a walk round there, and sometimes I used to go there to get the dimensions of vessels.

24 question. Have you always resided in this part of the town, and where has been your business?

Answer. Yes, sir; with the exception of a year or two, when I lived at the north end. I commenced business in the low building on Rowe's wharf, next to India wharf, and from there I went to Foster's wharf, next south of Rowe's.

25 question. How long has the drain entered into this dock. Did the street water from Summer street also run over into the dock?

Answer. As long as I can remember, the drain has entered into this dock. The street water did run into the dock.

And I further depose, in answer to cross-interrogations by Sidney Bartlett, esq., attorney for Thomas Richardson, as follows:

Cross-question. Have the owners of the wharves on each side of the dock, ever since you have known it, used it to bring vessels to their whaves?

Answer. Yes, sir; old Captain Robbins used to bring his brig there, and haul her on to the south side of the dock.

Additional Interrogations by Mr. Chandler.

Def't Chandler.

1. Do you mean to be understood that the fish boats used to come up to the foot of Summer street, and sell fish to persons standing there?

Answer. Yes, sir; because the fish market was there, right over the dock.

2 question. Did you go out of Summer street into the fish market?

Answer. Yes, sir; because it was placed right over the dock.

(Signed) JOSEPH his ⋈ mark. JONES.

Attest: (Signed) GEORGE T. CURTIS, *Commissioner.*

UNITED STATES OF AMERICA,
Massachusetts District, ss.

To Thomas Richardson, of Providence, in the State of Rhode Island, greeting:

Whereas the city of Boston, in said district, has requested me to take the deposition of Joseph Jones, of Boston, in said district, who is ancient and very infirm, which deposition is to be used in two actions at law pending in the circuit court of the United States for said district, in both of which said Richardson is plaintiff, and the said city of Boston is defendant, you are therefore hereby notified that I will take the deposition of the said Joseph Jones, at his house, numbered twenty-eight, on Purchall street, in said Boston, on Saturday, the twenty-ninth day of March, A. D. eighteen hundred and fifty-one, at 12 o'clock a. m., when and where you may be present, and put interrogatories, if you think fit.

Witness my hand this twenty-eighth day of March, A. D. 1857.

(Signed) GEO. T. CURTIS,
Commissioner of the U. S. Circuit Court.

I acknowledge notice.

S. BARTLETT,
For Pl'ff.

UNITED STATES OF AMERICA,
District of Massachusetts, ss.

On this twenty-ninth day of March, in the year eighteen hundred and fifty-one, the aforesaid Joseph Jones personally appeared before me, and being first duly sworn to testify the truth, the whole truth, and nothing but the truth, relating to the cause for which this deposition was taken, gave the foregoing deposition, by him subscribed in my presence, and the same was by me reduced to writing in his presence.

Taken at the request of the city of Boston, to be used in two causes now pending in the circuit court of the United States for the district of Massachusetts, wherein Thomas Richardson is plaintiff and the city of Boston are defendants

And the adverse party was duly notified and attended, by Sydney Bartlett, esq., his counsel, and cross-examined the deponent—the reason for taking his deposition being that the witness is aged and infirm.

Given under my hand and seal on the day and year above noted.

(Signed) GEO. T. CURTIS,
Commissioner of the Circuit and District Courts of the United States, for Massachusetts District.

Commissioner's fees	.....	$15 00
Witness do	.....	1 25

Robert Robbins, who testified that he was in the seventy-third year of his age; that he had been familiar with these wharves of the plaintiff, and the space between them, since 1810. When he first arrived in Boston he landed at the Bull wharf, the northerly wharf of the plaintiff. The vessel that brought him landed him there, and went elsewhere to unload; that the passage way between the two wharves had always been used for boats and vessels; that when he first knew it there was a fish market at the head of the dock, and boats came up and down, and landed, and sold their fish at the head of the dock; that the man who kept a fish box at the head of the dock purchased his fish of the fishing boats which came there, and others also purchased of them there; that according to his observation low-water mark has receded at that place.

Henry Curtis, who testified that he had known the premises from forty to fifty years, and the space in question had always been an open dock for vessels to haul in and out.

Stephen P. Fuller, who testified that he was a surveyor and civil engineer, and had been engaged in that business forty-one years in the city of Boston; that the plan in the case is correct; that the earliest survey he made of any part of these premises was in 1821, and has made other surveys thereof since at various times; that he

examined the Bull wharf in 1836, to see if it was an ancient wharf; it appeared to be a very ancient wharf; it was built of sound timber, smaller than more recent wharves have been built of. Richardson built the new part in 1836.

And on cross-examination he further testified, that he remembered Flounder alley, and it is marked on the plan; that he had never seen the ground opened below the upper line of what is now Broad street, but has at the corner of Summer and Broad streets, and that it appears to be two hundred and seventy feet from Flounder lane to the jog in the Bull wharf, from which Richardson extended it, and about three hundred feet from that jog to the west side of Broad street; that he couldn't say how old the wharf was, but it appeared to be a very ancient wharf; and being asked if there were indications that the wharf was older than 1750, he replied, there were. It was built of round timber, and of a kind which looked as if picked up in the neighborhood. These are the kind of materials to indicate age. Most of the ancient wharves are built like this. Those after 1700, I think, used much larger timber. In 1830 I looked for low water at the extreme lowest tides, and it was where it is marked on the plan. Common tides it would be up the dock, as far as the end of the old Bull wharf. There is about four feet difference between the highest spring and lowest neap tides. The former rise twelve and one-half feet. In 1830, at extreme lowest tide, the mud showed just at the end of Richardson's wharf. Has seen and observed high water a number of times, and the line on the plan is proximately where it would be if there was no filling up. The ancient Bull wharf was forty feet wide, as marked on the plan, and was Cobb wharf. From this to the next wharf north the space was covered with stringers and plank and dirt, so that you could go under this part of the wharf.

The plaintiff also offered evidence tending to show that by reason of the prevention of the passage of boats and vessels to and from the sides of his wharves their rentable value had been greatly diminished during the time covered by the declaration, and that he had by reason thereof suffered great damage.

The defendant then opened his defence, and denied that any such highway as is counted on in the said seventh count of the declaration existed; and to support the issue on his part, introduced the following documentary evidence:

Liberty to Banister.

September 15th, 1710.

At a meeting of the selectmen, &c.—

Liberty is granted to Mr. Thomas Banister and compa. to dig in the highway in Summer street for the lying a drain or common

shore there, provided they lay the said drain with brick or stone, as the law directs, and that they lay the same not less than five foot deep under the surface of the ground where they dig in said street; and also, that they effect the said work with speed, so as to obstruct the way as little as may be.

A true copy from the records of the selectmen of the town of Boston.

Attest: SAM'L F. McCLEARY,
City Clerk.

Liberty to Peniman.

Sept. 23, 1718.

At a meeting of the selectmen, &c.—

Liberty is granted to James Peneman to dig upon the highway in Summer street, for about 29 feet in length, for the laying his cellar drain into the common shore there, provided he lay the same with brick or stone; and also, that he forthwith repair and make good that part of the said street way which he shall so dig.

A true copy from the records of the selectmen of the town of Boston.

Attest: SAM'L F. McCLEARY,
City Clerk.

Liberty to Vassal et al.

April 29, 1728.

At a meeting of the selectmen, &c.—

Liberty is granted to Major Vassal and the deacon of the old church to open the ground in Summer street, to lay a drain from his house and the church-house shore down to the sea, they making good the ground and pavement they take up to the satisfaction of the selectmen, and from time to time keeping it in repair.

A true copy from the records of the selectmen of the town of Boston.

Attest: SAM'L F. McCLEARY,
City Clerk.

Liberty to Hill.

March 27th, 1731.

At a meeting of the selectmen, &c.—

Liberty is granted to Mr. Thomas Hill to take up the pavement and dig up the ground, to carry his drain from his new cellar into a common shore, in Summer street, he making good the ground and pavement to the satisfaction of the selectmen, and from time to time keeping them in repair.

A true copy from the records of the selectmen of the town of Boston.

Attest; SAM'L F. McCLEARY,
City Clerk.

Liberty to Armitage.

March 23*d*, 1732.

At a meeting of the selectmen, &c.—

Liberty granted to Mr. Jona Armitage to take up the pavement and dig up the ground in Summer street, to carry his drain from his house, in Summer street, to the common shore there, he forthwith making good the ground and pavement to the satisfaction of the selectmen, and from time to time keeping them in repair.

A true copy from the records of the selectmen of the town of Boston.

Attest: SAM'L F. McCLEARY,
City Clerk.

Morrel et al.—Order of Notice.

July 8, 1802.

At a meeting of the selectmen, &c.—

On the application of Mr. Morrel and Mr. Andrews, an order of notice was given to the proprietors of the common sewer in Newbury street and Summer street to appear on or before Thursday next, to show cause why said common sewer should not be repaired, and the expense assessed upon them generally, according to law.

Copy from the records of the selectmen of the town of Boston.

Attest: SAM'L F. McCLEARY,
City Clerk.

Liberty to Robbins.

At a meeting of the selectmen, Sept. 15th, 1802. Present, Messrs. Bulfinch, Yilden, Sturgis, Howard, Porter, Tileston and Hunnewell.—

On the application of John D. Robbins, for liberty to fill up the dock at the bottom of Summer street, Mr. Sturgis, Mr. Tileston, and Mr. Yilden appointed a committee to consider whether it be expedient that the request of Mr. Robbins be complied with, and upon what terms, or whether it should be done at the expense of the town.

At a meeting of the selectmen, Jan. 12th, 1803. Present, Messrs. Bulfinch, Yilden, Sturgis, Porter, Tileston, Oliver.—

Mr. Derby Robbins is authorized to build a head to the dock at the bottom of Summer street, and fill up the dock, he to be at the whole expense thereof, and to lay a common sewer therein, of the dimensions that may be agreeable to the committee.

BOSTON, *July* 7, 1853.

I, the subscriber, do hereby certify that the foregoing are true copies from the records of the selectmen of the town of Boston.

SAM'L F. McCLEARY,
City Clerk.

Sullivan et al.—Order of Notice.

May 3*d*, 1803.

At a meeting of the selectmen, &c.—

Upon application from James Sullivan, esq., and others, for liberty to open and repair the common sewer in Summer street—

Ordered, That the proprietors and others whose drains enter therein be notified to appeal on or before Wednesday, the 11th inst., to make their objections.

A true copy from the records of the selectmen of the town of Boston.

Attest: SAM'L F. McCLEARY,
City Clerk.

Return and Order on Sullivan's Petition.

February 22*d*, 1804.

At a meeting of the selectmen, &c.—

Return having been made by James Sullivan, esq., of the expense of laying a new sewer through Winter street, part of Newbury street, and through Summer street to the sea, the accounts whereof were duly examined by the selectmen, and by them allowed, they being informed at the same time that every person concerned in said common sewer had been duly warned according to law, and no objections having been entered to his proceeding, assessment is now made thereon by the selectmen, and order of payment is now made out; which is as follows:

Whereas a common sewer in Newbury street, Winter and Summer street, has been laid, conformable to the direction of the selectmen, the whole expense whereof, according to an account laid before and examined by the selectmen, amounted to $4,102 14, and as such expense is to be borne by such person or persons whose drains enter into such common sewer and receive benefit thereby, in such proportions as shall be adjudged by the selectmen of said town, or the major part of them, who were empowered by law to apportion the same, the said James Sullivan, esq., having agreeable to law notified all the concerned before he had proceeded on the business, and no objection having been made thereto—

Therefore we, the subscribers, selectmen of said town of Boston, do hereby certify, that having considered of said expense, and by whom and in what manner it ought to be paid, do adjudge that the same ought to be paid in the proportion following, and by the persons hereinafter named, viz:

[Here follow the names of 66 persons, and the assessments laid on each.]

And we do hereby appoint Mr. George Sullivan to receive of the persons above named the sums affixed to their several names, and to give discharges therefor. Charles Bulfinch, David Tilden,

William Porter, John Tileston, Eben'r Oliver, Johnathan Hunnewell, John May, Thomas Wright, selectmen of the town of Boston.

A true copy from the records of the selectmen of the town of Boston.

Attest: SAM'L F. McCLEARY,
City Clerk.

ANNO 1736, *March* 23.

Samuel Adams, esq'r, being present, desiring the selectmen to run the line, in order to ascertain the breadth of Summer street at the lower end thereof, near the sign of the Bull, it was agreed that the selectmen would meet at the said place to-morrow morning, at half an hour after eight o'clock, to attend that service.

A true copy of documents No. 5 and 6.

Attest: S. F. McCLEARY,
City Clerk.

Selectmen's Record on Mrs. Dyre's Petition.

At a meeting of the selectmen, June 30, 1740: Present, Caleb Lyman, esq., Thomas Hutchinson, esq., Mr. Clarke, Mr. Hancock, Mr. Cooke.—

On Friday last, the 27th of June current, the selectmen met at Bull's wharf, the lower end of Summer street, upon the desire of Mrs. Dyre, and run the line between the town and said Dyre, and staked out the highway, taking the measure from the well on the north side of the said highway, which is agreeable to the record thereof, made *made* in the year 1683.

BOSTON, *Sept.* 9, 1858.

The foregoing is a true copy from the records of the selectmen of the town of Boston.

Attest: SAM'L F. McCLEARY,
City Clerk.

Order to repair Sewer.

May 28, 1821.

At a meeting of the selectmen, &c.—

On the application of Samuel Salisbury, stating that the common sewer in Summer street had gone to decay, and requesting permission to open and repair the same, an order of notice to the proprietor was passed in the usual form.

A true copy from the records of the selectmen of the town of Boston.

Attest: SAM'L F. McCLEARY,
City Clerk.

Order on repairs of Sewer.

At a meeting of the selectmen of the town of Boston, held May 18, 1803.—

The above gentlemen (Mr. Hunnewell and Mr. Wright) are appointed a committee to inspect the repairs in the common sewer in Summer street, about to be undertaken, and to see that the same is well and sufficiently done.

A true copy from the records of the town of Boston.

Attest: S. F. McCLEARY,
City Clerk.

Record of Board of Aldermen on Petition of Richardson.

City of Boston, in Board of Aldermen, May 2, 1836.

Petition of Thomas Richardson, stating that the proprietors of estates at the bottom of Summer street are about to improve their land, which will render it necessary to have the common sewer extended.

Referred to the committee on sewers and drains.

A true copy of record.

Attest: SAM'L F. McCLEARY,
City Clerk.

Order of Notice on Richardson's Petition.

City of Boston, in Board of Aldermen, May 9, 1836.

On petition of Thomas Richardson, the committee on drains and sewers recommend that notice be given to all persons interested to appear before this board on Monday next, 4 o'clock p. m., that the mayor and aldermen will take into consideration the expediency of extending the common sewer at the foot of Summer street, agreeably to the prayer of said petition.

Read, accepted, and ordered accordingly.

A true copy of record.

Attest: SAM'L F. McCLEARY,
City Clerk.

Order on Richardson's Petition.

City of Boston, in Board of Aldermen, May 16, 1836.

It appearing to this board that notice has been given on the petition of Thomas Richardson, agreeably to the order passed at the last meeting of this board, and no person appearing to object, except William Parsons, it was thereupon

Ordered, That said sewer at the bottom of Summer street be extended as prayed for, and the expense thereof assessed upon those whose estates shall be benefitted thereby, according to law.

A true copy of record.

Attest: SAM'L F. McCLEARY.
City Clerk.

Leave to Robinson for Fish Box.

March 23, 1803.

At a meeting of the selectmen, &c.—

On the application of Mr. Robert Robinson, for liberty to put

a fish box at the bottom of Summer street, it is agreed that the request be granted—the box to be placed under the direction of the selectmen comm'ee, Mr. Tileston and Mr. Hunnewell.

A true copy from the records of the selectmen of Boston.

Attest: SAM'L F. McCLEARY,
City Clerk.

Fish Stall to Stevens.

September 21, 1803.

At a meeting of the selectmen, &c.—

Joseph Stevens is permitted to occupy the fish stall at the bottom of Summer street, lately allowed to Robinson, who consents thereto. Mr. Tileston and Mr. Hunnewell were desired to direct the alterations in the stall which Mr. Stevens proposes to make.

A true copy from the records of the selectmen of the town of Boston.

Attest: SAM'L F. McCLEARY,
City Clerk.

Removal of Fish Box.

August 14, 1805.

At a meeting of the selectmen, &c.—

Mr. Tileston appointed to see to the removing of the fish box at the foot of Summer street, over the water.

A true copy from the records of the selectmen of Boston.

Attest: SAM'L F. McCLEARY,
City Clerk.

Stevens—Liberty to put Fish Box.

October 2*d*, 1805.

At a meeting of the selectmen, &c.—

Mr. Stevens applied for liberty to erect a fish box over the water at the bottom of Summer street, and presented a recommendation from a number of the neighborhood.

Mr. Tileston was desired to give direction for building the same, as he should judge proper.

A true copy from the records of the selectmen of the town of Boston.

Attest: SAM'L F. McCLEARY,
City Clerk.

Summer street Repairs.

City of Boston, in the Board of Aldermen, Nov. 30, 1829.

Ordered, That the committees of the district be authorized and instructed to examine the bottom of Summer street, and make such

repairs to the same as they may deem expedient, damaged by the sea.

Attest: SAM'L F. McCLEARY,
City Clerk.

The committee report that they have discharged the duty imposed on them by virtue of the within order, and have caused the wharf at the bottom of Summer street to be repaired; the whole cost of materials and labor for said repairs amounts to fifty-one dollars and 26 cents. For the committee—

TH'S KENDALL.

Dec'r 28th, 1829.

BOSTON, *Sept.* 22*d*, 1858.

The foregoing is a true copy of the original order, and the report thereon.

Attest: SAM'L F. McCLEARY,
City Clerk.

Extract from City Auditor's Report, 1830—*Expenditures.*

For capsil and fence at the bottom of Summer street, 51 26.

Petition of P. C. Brooks et al. for Sewer.—Order of Notice and Order upon same.

City of Boston, in Board of Aldermen, May 25, 1840.

Petition of P. C. Brooks and others, to have a common sewer laid in Summer street. Referred to the committee on sewers and drains.

In Board of Aldermen, June 2, 1840.

The committee on the petition of P. C. Brooks and others, to have a common sewer laid in Summer st., reported that an order of notice be issued, returnable on Monday next, at four o'clock p. m. Accepted and ordered accordingly.

In Board of Aldermen, June 8, 1840.

On petition of P. C. Brooks and others, to have a common sewer laid in Summer street; and now it appearing that notice has been given agreeably to the order passed on Tuesday last, and Messrs. Gibbens and Hayden appeared in behalf of the First Church, but did not object to the same, thereupon—

Ordered, That the committee on sewers and drains be authorized to cause said sewer to be laid in such part of said street as may be found necessary.

A true copy of record.

Attest: SAM'L F. McCLEARY,
City Clerk.

Petition of E. T. Weatherbee et al., with endorsements thereon.

To their Honors the Mayor and Aldermen of the City of Boston.

The petition of the undersigned humbly showeth: That the common sewer, leading into the dock at the foot of Summer street, has become so rotten and out of repair as to be incapable of carrying off the water, whereby your petitioners, and many others, have been put to much loss and inconvenience by having their cellars overflowed, and otherwise annoyed by filth from said sewer.

Your petitioners most humbly pray that your honors will be pleased to order a new sewer to be made as soon as convenient.

ELIJAH T. WEATHERBEE,
JEDEDIAH TUTTLE,
JOSEPH BOND.

On the petition of Elijah T. Weatherbee and others for a common sewer in Summer street, the committee on drains and sewers recommend that lawful notice be given in the usual manner for a hearing before the mayor and aldermen.

For the committee—

J. B. McCLEARY.

July 1, 1836.

BOSTON, *Sept.* 22, 1858.

I hereby certify that the foregoing is a true copy of the original petition and the endorsements thereon.

SAM'L F. McCLEARY,
City Clerk.

The defendants also offered in evidence two indictments against the city of Boston, which were as follows:

COMMONWEALTH OF MASSACHUSETTS,
Suffolk, to wit:

At the municipal court of the city of Boston, begun and holden at said Boston, within and for the county of Suffolk, on the first Monday of December, in the year of our Lord one thousand eight hundred and forty-eight—

The jurors for the Commonwealth of Massachusetts on their oath present, that the inhabitants of the city of Boston, in their corporate capacity of Boston aforesaid, in said county of Suffolk, on the first day of December, in the year of our Lord one thousand eight hundred and forty-eight, at Boston aforesaid, in said county, a certain common and public nuisance, in and upon the land of the said inhabitants of said city, situated at the southerly part of said Boston, at the foot of Summer street, near to certain public passageways, highways and streets, called and known by the name of Summer street, Sea street, and New Broad street, there situate, and

near to the wharves of several citizens there situate, the names of the owners of said wharves being as yet not known to the jurors, did erect, cause, create, suffer and maintain, by then and there causing and suffering great quantities of offensive and stinking filth, water, and substances, solid and liquid, to collect, stagnate, ferment, and be mixed together, in and upon their said land aforesaid, and from said land to flow, descend, and be removed to and upon certain open and exposed places upon, in, and near the same land and wharves, into and upon certain flats and lands belonging to said inhabitants of said city of Boston; and from said offensive and stinking substances, water, and filth, did cause, suffer, and permit divers noxious, offensive, deleterious, unwholesome and unhealthy vapors, exhalations, and smells to arise, and then and there to contaminate, poison, and destroy the air and atmosphere above, around, and near the same lands and flats, and in and upon and over said passage ways, and highways and streets and wharves, to wit, the passage ways and streets called Summer street, Sea street, and New Broad street, over which the good citizens of said Commonwealth in great numbers pass and repass every day, to wit, to the number of three hundred passengers daily, and near which many citizens inhabit, live, and work, to the great danger and injury of said passengers, and all other persons there being, residing and passing, to the great hazard of their health, comfort, and lives, and to the common nuisance of all said passengers, persons, and citizens, and of all the citizens of said Commonwealth there being, and against the law, peace, and dignity of said Commonwealth.

This indictment was found at the December term, in the year of our Lord eighteen hundred and forty-eight, and was continued from term to term to the December term, in the year of our Lord eighteen hundred and forty-nine, when the city of Boston, by their solicitor, P. W. Chandler, esquire, appeared, and said they would not contend with the Commonwealth.

It was therefore considered by the court that said city of Boston, for the offence as set forth in the indictment, pay a fine of ten dollars.

COMMONWEALTH OF MASSACHUSETTS,
Suffolk, ss.

I, Thomas W. Phillips, clerk of said municipal court, hereby certify that the foregoing is a true copy from the records of said court in my custody.

Witness my hand and the seal of said court hereto set, this 12th day of July, A. D. 1853.

THOMAS W. PHILLIPS,
Clerk of said Municipal Court.

COMMONWEALTH OF MASSACHUSETTS,
Suffolk, to wit:

At the municipal court of the city of Boston, begun and holden at said Boston, within and for the county of Suffolk, on the first Monday of June, in the year of our Lord one thousand eight hundred and forty-nine, the jurors for the Commonwealth of Massachusetts, on their oath, present, that the inhabitants of the city of Boston, in their corporate capacity, being a municipal corporation, duly established by law of said Commonwealth of *Boston* aforesaid, in said county of Suffolk, on the first day of January, in the year of our Lord one thousand eight hundred and forty-nine, at Boston aforesaid, in said county, a certain common and public nuisance in and upon the land and tenement of the said inhabitants of said city, owned by them in their corporate capacity, situated at the southerly part of said Boston, near to certain public passage ways, to wit, certain passage ways and highways there situate, severally called and known by the name of Summer street, Sea street, Broad street, New Broad street, and Purchase street, and near to several wharves, docks, tide-waters, and landings, near to divers dwelling-houses, shops, store-rooms and buildings there situate, did erect, cause, create, suffer and maintain, by then and there causing and suffering great quantities of offensive and stinking filth, water, and substances, solid and liquid, to collect, stagnate, ferment, and be mixed together, in and upon their said land and tenement aforesaid, and from said land and tenement to flow, descend, and be removed to and upon certain open and exposed places and docks upon, in, and near the same land and tenement, and to and upon certain public passages and highways near thereunto, to wit, certain passage ways severally called and known by the name of Summer street, Sea street, Broad street, New Broad street, and Purchase street, and from said offensive and stinking substances, water and filth, did cause, suffer, and permit divers noxious, offensive, deleterious, unwholesome, and unhealthy vapors, exhalations, and smells to arise, and then and there to contaminate, poison, and destroy the air and atmosphere above, around, and near the same tenements and lands, and in and upon and over said passage ways and highways, to wit, the passage ways and highways called Purchase street, Summer street, Sea street, Broad street, and New Broad street, and near to divers wharves, docks, landing-places, tide-waters, dwelling-houses, shops, stores, and buildings, over which the good citizens of said Commonwealth in great numbers pass and repass every day, to wit, to the number of three hundred passengers daily, and near to which many citizens inhabit, live, and work, to the great damage and injury of said passengers, and all the persons there being, residing, and passing, to the great hazard of their health, comfort, and lives, and to the common nuisance of all said passengers, persons, and citizens, and

of all the citizens of said Commonwealth there being, and against the law, peace, and dignity of said Commonwealth.

This indictment was found at the last June term, and was thence continued from term to term to the December term, in the year of our Lord eighteen hundred and forty-nine, when the city of Boston, by their solicitor, P. W. Chandler, esquire, appear, and say they will not contend with the Commonwealth.

It is therefore considered by the court that said city of Boston, for the offence as set forth in the indictment, pay a fine of ten dollars.

COMMONWEALTH OF MASSACHUSETTS,
Suffolk, ss.

I, Thomas W. Phillips, clerk of said municipal court, hereby certify that the foregoing is a true copy from the records of said court.

Witness my hand and the seal of said court hereto set, this 12th day of July, A. D. 1853.

THOMAS W. PHILLIPS,
Clerk of said Municipal Court.

These indictments were objected to by the plaintiff, as not being competent evidence as against him on this issue, but were ruled to be admissible in evidence, and were admitted; and the plaintiff thereupon excepted to this ruling.

The defendant also put in evidence an ordinance of the city of Boston of June 18, 1849, as follows:

CITY OF BOSTON.

An Ordinance constituting the Board of Health for the City.

Be it ordained by the mayor, aldermen, and common council of the city of Boston, in city council assembled, as follows:

The mayor and aldermen shall constitute the board of health of the city, and shall exercise all the powers and perform all the duties now vested in the city council as a board of health, with the right of carrying into execution such powers and duties, through the agency of any persons whom they may select or in any manner which they may prescribe.

In Common Council, June 14, 1849.

Passed. Sent up for concurrence.

BENJAMIN SEAVER, *President.*

In Board of Mayor and Aldermen, June 18, 1849.

Passed in concurrence.

JOHN P. BIGELOW, *Mayor.*

BOSTON, *Aug.* 26, 1858.

I hereby certify that the foregoing is a true copy of the original ordinance.

SAM'L F. McCLEARY,
City Clerk.

It was alleged by the defendants, and for the purpose of this trial not controverted by the plaintiff, the *the* city owned the soil of the alleged way; the defendants then requested the court to rule and instruct the jury as follows:

Defendants' Prayers for Rulings.

1. If it shall be made to appear that the structure in question was erected by the board of health in good faith for the protection of the public health, their decision not being impeached is conclusive of the necessity of the structure; and though the proceedings be prejudicial to the use of the dock for navigation, it is damnum absque injuria, and affords in that respect no ground of action to the plaintiff.

2. If in such a case the act of the board of health be done in bad faith, or otherwise, so as to entitle the plaintiff to an action, that action might be against them, but not against the city of Boston.

3. All the assumed grounds or rights of action pretended by the plaintiff in the present record, have been specifically and definitely adjudged against him by the Supreme Court of the United States, except the simple one of the question of fact and law, involved in the alleged accretion at the sea end of the plaintiff's wharf.

4. There is in the proofs adduced by the plaintiff no evidence tending to show any dedication of the locus by the city as a way for the passage of vessels or other; and so far as there is evidence of a water transit thereon, it does not tend to show any right of dockage in the plaintiff, either of private or of general right, nor any right of access thereby to and from his wharves, but if anything, then only a transit by sufferance to and from the sea and the foot of the proper street, and which might lawfully be enclosed on each side by the city.

5. The selectmen of the town of Boston had no authority to lay out a highway or town way on the shore, between high and low-water mark.

6. The selectmen had no authority to lay out a way for boats or vessels.

7. The highway staked out by the selectmen in 1683, on the southerly side of the land of John Gill, was, by the legal intendment of the terms of the act, a highway on land, and not a way for boats or vessels.

8. If it were the legal intendment of this laying out, that in

terms it extended a highway or town way below high-water mark, then the laying out would be valid down to high-water mark, and void beyond that point.

9. The fee of the dock being in the city, although all persons had rights to pass and repass on the waters covering it so long as these remained open and unobstructed, yet the city as proprietor might when it pleased enclose, build, or obstruct to low-water mark, and exclude all mankind.

10. There is in the proofs adduced by the plaintiff no evidence tending to show the existence of a landing place here at the foot of the street by the sea, but only of an ancient drain for the use of the town of Boston and its inhabitants, as well for surface as for underground drainage of the town.

11. If by the construction of this drain the plaintiff has been deprived of any rights, he has received compensation therefor in a judgment heretofore recovered and satisfied.

The plaintiff then requested the court to rule and instruct the jury, as follows:

CIRCUIT COURT U. S.,
Rhode Island District.

June Term, 1858.

THOMAS RICHARDSON
vs.
THE CITY OF BOSTON.

Plaintiff's Requests for Instructions.

1. There is evidence in the case tending to show that the boundary of the highway, now called Summer street, next the sea, was and is low-water mark; this evidence is for the consideration of the jury, and it is competent for them to find therefrom that the boundary of the said highway next the sea was and is low-water mark.

2. If the said highway does extend to low water, the plaintiff has a right to pass along and across the same, with boats and vessels, and anything which obstructs said passage is a nuisance, and injurious to his right.

3. A drain which obstructs the plaintiff from passing along and across the way in question with boats and vessels, if it be a public highway, is a nuisance, and injurious to his rights.

4. If such a drain was built by the superintendent of drains of the city of Boston, under an order of the mayor and aldermen of that city, and was paid for out of the city treasury by the orders of the city auditor, with the approval of the joint committee of the city council, charged with the supervision of the expenditures of the city, the corporation is responsible to the plaintiff for any damages he may be entitled to recover on account of the existence of said drain.

But the court refused to rule and instruct the jury in conformity with the first, second, or third prayer of the plaintiff, and did rule and instruct the jury as follows:

The court instruct the jury, that by the common law of England, the right of littoral proprietors bounding on public navigable waters extended only to high-water mark. Such also was the law of Massachusetts prior to the passage of the colonial ordinance, usually denominated the ordinance of 1641, whereby a different rule was established, which ever after prevailed in the colony, and finally became and is the common law of that Commonwealth.

By that ordinance, the grantee of land bounding on navigable waters where the tide ebbs and flows acquires a legal right and vested interest in the soil of the shore between high and low-water mark, subject to the qualification or rule, that unless he shall build up on his flats, or enclose or otherwise reclaim them, and whilst they are covered with the sea, all other persons have the right to use them for the ordinary purposes of navigation; and so long as the owners of the flats permit the sea to flow over them, the individual right of property in the soil beneath does not restrain or abridge the public right of navigation; and subject, also, to certain restrictions in its use, so that the State, in the exercise of its sovereign power of police for the protection of public harbors and to prevent encroachments therein, may establish lines and restrain and limit the power of the owner over his own property.

That the town of Boston, as the proprietor and owner of the upland bounding on the shore, held also the legal interest and vested right in the soil of the parcel of flats lying between the plaintiff's wharves and extending from high to low-water mark, subject only to the qualifications stated in the preceding instruction, as applicable generally to littoral proprietors owning such real property. That the city of Boston, as the successor of the town of Boston, being the owner of the said parcel of flats as aforesaid, might lawfully reclaim the same, by constructing thereon a suitable and proper drain for the preservation of the public health or the convenience of the inhabitants of the city, subject only to the aforesaid police power of the State, unless the city of Boston, or those under whom the city now claim, had in some way lost or parted with the right so to do. That there is not any evidence in the case which will authorize the jury to find that the supposed way or dock between the plaintiff's wharves, from high to low-water mark, for the free egress and ingress of boats and vessels to and from the same, as alleged and described in the seventh count in his declaration, was ever dedicated by the town or city of Boston to the public use, either as a public highway, town way, dock or public way, for the access of boats and vessels between said wharves to high-water mark, or the egress therefrom to the sea. That there is not any evidence in the case which will authorize the

jury to find that the supposed way or dock between the plaintiff's wharves, from high to low-water mark, for the egress and ingress of boats and vessels to and from the same, as alleged and described in the seventh count in his declaration, was ever duly laid out and established by the town of Boston, or the authorities thereof, pursuant to law, either as a public highway, town way, or public way for the access of boats and vessels between said wharves to high-water mark, or the egress therefrom to the sea. That the city of Boston, in exercising the right to reclaim the said parcel of flats, by constructing a drain thereon for the purposes aforesaid, would be bound so to construct the drain that neither the structure itself nor its use as a drain would invade the legal rights of the plaintiff, as the proprietor and owner of the adjoining wharves.

That the plaintiff, as the owner of the adjoining wharves, as well after as before the said city of Boston had so exercised the right to reclaim the said parcel of flats, by constructing a drain for the purposes aforesaid, would be entitled to have and enjoy the free, uninterrupted, and unimpaired right of access for boats and vessels to the foot of his respective wharves, and egress therefrom to the sea.

That there is not any evidence in the case which will authorize the jury to find that the structure, which is the subject of inquiry in this suit, merely as a structure, independently of its use as a drain, invades or ever invaded the legal rights of the plaintiff, as the proprietor and owner of the adjoining wharves.

That a drain for the purposes aforesaid, located on and over the said parcel of flats of the said city of Boston, between the plaintiff's wharves, extending from high to low-water mark, not especially authorized by the legislature of the State, and so constructed and used as such that the matter discharged therefrom should cause the water to shoal by accretion on the surface of the soil beneath, seaward of the foot of the plaintiff's wharves, and near to the same, so as to obstruct, impede, or substantially impair the public right of navigation upon, over, and through the navigable waters of that part of the harbor of Boston, would thereby become a public nuisance, and if it occasioned special injury to the plaintiff, not common to all the citizens, by obstructing, impeding, or substantially impairing the free access of boats and vessels to the foot of his said wharves, or the egress therefrom to the sea, and thereby diminished the value and rents of his said wharves, as is alleged in the seventh count of his declaration, the plaintiff would have a right of action for such special injury so occasioned, against the person or corporation by whom in judgment of law such public nuisance had been erected and used as aforesaid and if continued, with like injurious consequences to the public right of navigation and like special injury to the plaintiff, as is therein alleged, which is the only claim to be considered by the jury in this case, he would

have a right of action to recover damages for such special injury occasioned by its continuance; that whether the matter discharged from the said drain has or has not caused the water to shoal by accretion on the surface of the soil beneath, at or near the place described in the preceeding instruction, so as to obstruct, impede, or substantially impair the public right of navigation upon, over, and through said navigable waters, and whether the public right of navigation thereon was and is thereby obstructed, impeded, or substantially impaired, and if so, whether it has occasioned any special injury to the plaintiff, within the principle or rule of law as stated in the preceding instruction, are respectively questions of fact, to be determined by the evidence in the case, and are exclusively within the province of the jury, as is also the question, if the jury find the foregoing matters in favor of the plaintiff, whether the nuisance was continued with like injurious consequences to the public right of navigation and with like special injury to the plaintiff, as is alleged in the seventh count in his declaration. That if the jury find the several matters submitted as questions of fact to their determination in favor of the plaintiff, under the next preceding instruction, and if they also find from the evidence in the case that the drain was erected and constructed on the said flats of the said city of Boston, between the said wharves of the plaintiff, by the order of the mayor and aldermen of said city, acting as the board of health of the said city, and that the expense of its erecting and construction were paid for out of the treasury of said city by the auditor of the said city, with the approval of the joint committee of the city council, charged with the supervision of the expenditures of the said city, and that, during all the time mentioned in the seventh count of the plaintiff's declaration, the said drain was continued and used as a drain for the preservation of the public health and convenience of the inhabitants of the said city of Boston, then the jury are authorized under the said seventh count to find a verdict for the plaintiff for the special injury so occasioned to the plaintiff, in the manner and by the means aforesaid.

That the only claim made by the plaintiff for which, in any view of the case, he is entitled to recover in this suit, is for the alleged continuance of the supposed nuisance from the thirteenth day of September, 1850, to the fifteenth day of April, 1852, which is the date of the writ.

That the record of the former verdict and judgment is admissible in evidence; but inasmuch as it appears that the verdict was found by the jury under an erroneous instruction given by the court, the judgment is entitled to very little weight upon the question of the right to recover in this case, and none whatever upon the question whether the supposed way or dock before described was duly laid out and established by the town of Boston, or the authorities thereof, pursuant to law, either as a public highway, town way,

or public way, for the access of boats and vessels to high water, or the egress therefrom to the sea, as is alleged in the seventh count of the plaintiff's declaration.

By his Honor Judge Pitman.

The record above referred to was in a case decided by me upon an agreed statement of facts, which was excluded in this case. It was therein admitted by the defendant that the place between the said wharves was "an ancient public dock or highway." This fact and the case having been submitted to Judge Sprague, and decided by him in favor of the plaintiff before the case was sent to the Rhode Island district, I was disposed to decide the same way, unless I saw it was manifestly erroneous. It was to be determined under the law of Massachusettes, with which I believed he was much better acquainted than myself. I did not therefore so critically examine the documents in the case, and their legal effect, as I have since done. Since the decision of the Supreme Court of the United States in the case of Lecraw vs. City of Boston, I have considered the opinion erroneous which I then delivered, and the judgment as entitled to no weight for that reason as evidence to a jury, and therefore I excluded the judgment from the consideration of the jury in the former trial. I am now of the opinion that it is entitled to no weight, though it be admissible.

I did not decide that the supposed way was laid out as a way for boats and vessels by the town of Boston or its authorities. I instructed the jury that the plaintiff was entitled to recover upon the sixth count of his declaration, the one on which he rested his case, and they found a verdict accordingly.

September 16, 1858.

(Signed) JOHN PITMAN,
District Judge U. S., R. Island District.

And thereupon, before the jury had retired from the bar, the plaintiff excepted, as well to the refusal of the court to instruct the jury as prayed by him, as to the instructions respecting the said highway actually given by the court to the jury. And in as much as the matter of the said several exceptions of the said plaintiff does not appear of record in this case, he has prayed the court to sign, seal, and allow this bill of exceptions; which, being found in conformity with the truth, has been signed, sealed, and allowed accordingly.

NATHAN CLIFFORD, [SEAL.]
Associate Jus. Sup. Court.
JOHN PITMAN, [SEAL.]
District Judge U. S., for R. I. Dist.

THOMAS RICHARDSON
vs.
THE CITY OF BOSTON.

UNITED STATES OF AMERICA, *ss.*

The President of the United States to the Judges of the Circuit Court of the United States, holden in and for the Rhode Island district, greeting:

[SEAL.]

Because that in the record and process, and also in the rendering of a judgment in a suit before you or some of you, between Thomas Richardson, of Providence, in the State of Rhode Island, a citizen of the State of Rhode Island, plaintiff, and the City of Boston, a corporation established by law in the district of Massachusetts, defendant, in a plea of trespass on the case, a manifest error has intervened to the great damage of the plaintiff, as has in his complaint been stated, and it is just and proper that the error, if any there be, should be corrected in due manner, and that full and speedy justice should be done to the parties aforesaid in this behalf, you are hereby commanded, that if judgment thereof be given, then under your seal you do, distinctly and openly, send the record and process in the suit aforesaid, with all things concerning them, and this writ, so that you have the same before the Chief Justice and the associate justices of the Supreme Court of the United States, on the first Monday of December next, at Washington, being the present seat of the national government, that the record and process aforesaid being inspected, they may cause to be done thereupon what of right ought to be done.

Witness the Hon. Roger B. Taney, our Chief Justice of the said Supreme Court, this twenty-second day of September, in the year of our Lord one thousand eight hundred and fifty-eight, and of the independence of the United States the eighty third.

HENRY PITMAN,
Clerk Circuit Court U. States, for Rhode Island District.

Allowed.

JOHN PITMAN,
District Judge U. S., R. I. District.

THOMAS RICHARDSON
vs.
CITY OF BOSTON.
Issued Sept. 22d, 1858.

RHODE ISLAND DISTRICT, *ss.*

The President of the United States of America to the Marshal of said district, or to his deputy, greeting:

You are hereby required to make known to the city of Boston, a corporation established by law in the district of Massachusetts, that in a certain action of trespass on the case, wherein the said Thomas

Richardson was plaintiff and the said city of Boston was defendant, wherein judgment was rendered against said plaintiff, in the circuit court of the United States for the first circuit, holden at Newport, within and for said Rhode Island district, at the June term thereof, A. D. 1858, to wit, on the sixteenth day of September, being the twentieth day of the term, the said plaintiff has this day sued out a writ of error unto the Supreme Court of the United States, next to be holden at Washington, within and for said United States, on the first Monday of December next, A. D. 1858, and has also given bond, with good and sufficient surety, in a sum by me deemed sufficient, to prosecute said writ of error with effect, and to answer all damages and costs.

And that the said city of Boston is therefore cited and admonished to appear at said Supreme Court to show cause, if any there be, why the judgment rendered against said Thomas Richardson in the said writ of error mentioned should not be corrected, and why speedy justice should be done to the parties in that behalf.

Witness the seal of said circuit court, and my hand, this 22d day of September, A. D. one thousand eight hundred and fifty-eight.

JOHN PITMAN,
District Judge U. S. for Rhode Island Dist.

The City of Boston, the within named defendant in error, by Peleg W. Chandler, esq'r, its attorney and counsel, do admit that due and sufficient service of this citation has been made upon said city.

PELEG W. CHANDLER,
Attorney, &c.

Sep. 23, 1858.

UNITED STATES OF AMERICA,
Rhode Island District, ss.

CLERK'S OFFICE. CIRCUIT COURT,
Providence, December 20th, 1858.

I, Henry Pitman, clerk of the circuit court of the United States for the first circuit within and for the district of Rhode Island, in pursuance of the command contained in the within writ of error, do make return thereof, and annex hereto and transmit herewith a true copy of the entire record, and of all proceedings in the cause or suit of Thomas Richardson, plaintiff, against the City of Boston, defendant, wherein judgment was rendered in said circuit court of the United States.

I also annex the citation served by acknowledgment of the defendant upon the issuing of said writ of error, a copy of which writ was lodged in this office on the twenty-second day of September, A. D. 1858, by the plaintiff in error, for the adverse party.

In testimony whereof I have hereunto set the seal of said court and my hand, this twentieth day of December, A. D. 1858.

[SEAL.]

HENRY PITMAN,
Clerk Cir. Court U. S., R. I. Dist.

Filed 27th Dec., 1858.